

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: PRIDE Youth Programs
Docket No. A-08-131
Decision No. 2259

DATE: July 2, 2009

DECISION

PRIDE Youth Programs (PRIDE) appeals the August 26, 2008 decision of the Substance Abuse and Mental Health Services Administration (SAMHSA) finding a shortfall of \$37,898 in non-federal, matching expenditures for PRIDE's Drug-Free Communities Support Program (DFCSP) for the fiscal years ending September 29, 2006 and September 29, 2007 (FYs 2006 and 2007). SAMHSA calculated the amount of the shortfall based on the premise that the grantee was in its sixth and seventh years of DFCSP funding and, consequently, required to match its federal funding with \$100,000 in non-federal funds in FY 2006 and \$115,631 in non-federal funds in FY 2007. SAMSHA then determined that \$2,906 in PRIDE's claimed FY 2006 matching expenditures and \$34,992 in claimed FY 2007 matching expenditures for school assembly programs, office and meeting rental space, and salaries and fringe benefits were not allowable as matching expenditures.

For the reasons discussed below, we find first that the controlling award notices required PRIDE to match its federal funding with \$100,000 in non-federal funds in FY 2006 and \$100,000 in non-federal funds in FY 2007, reflecting a determination by SAMHSA, at the time the awards were issued, that the grantee was in its first and second years of DFCSP funding. We further conclude that this determination was consistent with the DFCSP statute and reasonable in light of the grantee's history. Next, we sustain SAMHSA's determination that PRIDE failed to adequately document claimed matching expenditures for assembly programs, rental space, and salaries and fringe benefits. Taking into account PRIDE's actual federal expenditures, the amount of allowable non-federal share, and the resulting shortfall of matching expenditures for FYs 2006 and 2007, we conclude that PRIDE claimed \$14,772 in federal funds to

which it was not entitled and which therefore must be returned to the Department of Health and Human Services.

Background

A. The Drug-Free Communities Support Program

The DFCSPP provides financial assistance to eligible, community-based coalitions for "the development and implementation of comprehensive, long-term plans and programs to prevent and treat substance abuse among youth." 21 U.S.C. § 1531(a).¹ To be eligible to receive a grant, a coalition must meet specified membership, organizational and accountability criteria. 21 U.S.C. § 1532. SAMHSA has administered the grant program since 2005. 21 U.S.C. § 1531(d); SAMHSA Ex. 1.

DFCSPP grants are awarded on an annual basis and in two separate, five-year funding cycles. 21 U.S.C. § 1532(b); SAMHSA Ex. 5, at 10-11. Award recipients must match federal grant funds with non-federal funds, which may (at the discretion of the administrator) include in-kind contributions. *Id.* In each year of a grantee's first, five-year funding cycle, the grantee must "receive and expend non-federal matching funds" "dollar-for-dollar" with DFCSPP funds. SAMHSA Ex. 5, at 10; 21 U.S.C. § 1532(b)(1)(A).

An eligible coalition may apply for "an additional grant . . . for any first fiscal year after the end" of the first, five-year funding cycle and for "renewal grants" for the next four years. 21 U.S.C. § 1532(b)(3). DFCSPP funds awarded under an "initial additional grant" (i.e., the sixth year of funding) must be matched dollar-for-dollar with non-federal funds. SAMHSA Ex. 5, at 10-11; 21 U.S.C. § 1532(b)(3). DFCSPP funds in the first and second years of the additional grant renewal period (i.e., the seventh and eighth years of federal funding) may not exceed 80% of the amount of non-federal share. 21 U.S.C. § 1532(b)(3)(D)(i). DFCSPP awards for the third and fourth

¹ The program was established by the Drug-Free Communities Act of 1997, Pub. L. No. 105-20, 111 Stat. 224, and has been reauthorized by the Drug-Free Communities Reauthorization Act of 2001, Pub. L. No. 107-82, 115 Stat. 814, and by the Office of National Drug Control Policy Reauthorization Act of 2006, Pub. L. No. 109-469, 120 Stat. 3502.

fiscal years of the additional grant renewal period (i.e., the ninth and tenth years of DFCSF funding) are limited to 67% of the non-federal share. 21 U.S.C. § 1532(b)(3)(D)(ii).

B. The Notice of Available DFCSF Funds

SAMHSA's announcement of available DFCSF funds for FY 2006 stated that to be eligible for a grant, a "coalition must be an organization legally eligible to apply for a grant or must make arrangements with an organization that will apply for the grant on behalf of the coalition and serve as the legal and fiscal agent for the grant." SAMHSA Ex. 5, at 8.

The announcement further stated that "you should apply as a **new applicant**" in any of the following "three instances": 1) "if you have never received DFCSF funding;" 2) "if you previously received DFCSF funding, but you have had a lapse in that funding for some reason;" or 3) "if you have already received 5 years of funding and are now applying for a 6th year . . . second cycle of DFCSF funding." SAMHSA Ex. 5, at 7 (emphasis in original). Where a lapse had occurred, the notice stated, the funding year would be "determined based on the number of years of DFCSF funding you have received." *Id.* The announcement also provided that "[f]ormer DFCSF grantees whose grant projects have ended and current DFCSF grantees who received their initial DFCSF awards in FY 2000 may apply for new DFCSF grant awards." *Id.*

C. The Grant Applications and Award Notices

In March 2005, PRIDE "partner[ed] with the Newaygo County Safe & Drug-Free Schools and Community Coalition" (Newaygo Coalition) to apply for a DFCSF grant for FY 2006. SAMHSA Ex. 4, at 1. PRIDE represented in the application that it was the grant applicant and fiscal agent of the Newaygo Coalition. *Id.* at 3. PRIDE also stated that the Newaygo Coalition had been established in 1992 and that the coalition had received a DFCSF award in FY 1998. *Id.* PRIDE indicated that the application was for a "new" award and stated that the proposed project was "to expand and improve drug prevention programs of the [Newaygo Coalition]." PRIDE February 13, 2009 submission, Ex. A-1. PRIDE's application included a budget estimate for FY 2006 showing the project would be supported by equal, \$100,000-shares of federal and non-federal, matching funds. *Id.* at Ex. D-1.

On August 22, 2005, SAMHSA issued a notice of grant award (NGA) to PRIDE for FY 2006. SAMHSA Ex. 6, at 1. The NGA showed a total approved budget for the year of \$200,000, supported by

equal, \$100,000-shares of federal and non-federal, matching funds. Id. The NGA also showed recommended future federal support of \$100,000 for each of the following four project years, designated as years "02," "03," "04" and "05." Id.²

PRIDE subsequently applied for DFCSF funding for FY 2007. Although a complete copy of that application is not in the record, the application budget estimates show that PRIDE proposed the project would continue to be funded by equal, \$100,000-shares of federal and non-federal, matching funds in FY 2007. See PRIDE October 21, 2008 submission, FY 2006/2007 DFCSF Budget Detail Worksheets.

By NGA dated April 21, 2006, SAMHSA awarded PRIDE funding for FY 2007. PRIDE February 13, 2009 submission, Ex. A-3. As provided under the NGA, SAMHSA authorized a total approved budget of \$200,000 for FY 2007, supported by equal, \$100,000-shares of federal and non-federal, matching funds. Id. The NGA also showed recommended future federal funding of \$100,000 for each of the next project years, designated years "03," "04," and "05." Id.

PRIDE subsequently applied for, and received, DFCSF funding for FY 2008. SAMHSA issued the NGA for FY 2008 in August 2007. SAMHSA Ex. 11, at 4. The NGA authorized a total approved budget of \$200,000 for the year, supported by equal, \$100,000-shares of DFCSF funds and non-federal, matching funds. Id. The NGA also showed recommended future DFCSF funding of \$100,000 for each of the following two years of the project, designated on the notice as years "04" and "05." Id.

All three of the NGAs stated that the awards were subject to:
a) the applicable legislation; b) the grant program regulations;
c) the award notice terms and conditions; d) the Public Health Service (PHS) Grants Policy Statement (GPS);³ and e) 45 C.F.R.

² SAMHSA revised the FY 2006 NGA on May 18, 2005 to place a special condition on PRIDE's access to funds due to PRIDE's financial capability. PRIDE May 27, 2009 submission, Ex. F-2. The approved budget and designation of federal/non-federal support in the revised NGA was the same as set forth under the original NGA. Id.

³ The January 1, 2007 Department of Health and Human Services (HHS) GPS superceded the PHS GPS. The HHS GPS is available at http://www.hhs.gov/grantsnet/docs/HHSGPS_107.doc.

Part 74. SAMHSA Ex. 6, at 1; PRIDE February 13, 2009 submission, Ex. A-3; SAMHSA Ex. 11, at 4. The NGAs also stated that the grantee must "maintain [accounting] records which adequately identify the source and application of funds provided for financially assisted activities[,] " including records of expenditures. SAMHSA Ex. 6, at 5, ¶ 4. Further, the NGAs provided, the grantee was responsible for ensuring that "all costs are allowable, allocable and reasonable." Id. at 6, ¶ 14.

D. *History of the Dispute*

In May 2007, SAMHSA initiated correspondence with PRIDE raising the question whether the grantee was in its first or second cycle of DFCSP funding. SAMHSA Ex. 3. Specifically, in a May 10, 2007 e-mail to PRIDE, a SAMHSA grants management specialist, Karen Warner, noted that PRIDE's "initial application (. . . Project Information Summary) indicate[d] that the organization was initially funded in 1998." SAMHSA Ex. 3, at 4. Ms. Warner stated that "[t]his project is identified as entering into its 10th year of funding." Id. "Therefore," Ms. Warner added, "the mandatory non-Federal share (match) is \$150,000." Id. Accordingly, Ms. Warner stated, "[i]f 1998 is the correct funding, please revise non-Federal detailed budget and budget narrative/justification and fax to me." Id.

In response, PRIDE's President and CEO, Paul Jay DeWispelaere, and Project Manager, Gale Beach, asserted that the grantee was in a first cycle of DFCSP funding. Specifically, in a May 14, 2007 e-mail and May 23, 2007 letter, PRIDE's representatives asserted that the Newaygo County Prosecutor's Office had applied for and received the 1998-2002 award. SAMHSA Ex. 3, at 2-4. After that time, PRIDE's representatives stated, there was a two-year lapse wherein "the coalition restructured and instead of being under the fiduciary of Newaygo County Prosecutor, changed to being under PRIDE Youth Programs." Id. at 4. PRIDE further stated that "in the past two years [the coalition] created bylaws, elected a chairperson, vice chair and trustees." Id. at 2.

By e-mail dated May 28, 2007, Ms. Warner requested a chart from PRIDE showing the "former coalition" and "new coalition" membership, locations and communities served and "when services started and ended." Id. at 1. By e-mail dated June 4, 2007, Gale Beach represented to SAMHSA that "after further review and consideration," Mr. DeWispelaere had "decided to not pursue the issue any further." Id.

In March 2008 the Cabezon Group (Cabezon), a contractor for SAMHSA, conducted a site visit and financial evaluation of PRIDE. SAMHSA Ex. 7. Cabezon's report stated that FYs 2006 and 2007 were the sixth and seventh years of the grantee's DFCSP funding. Id. at 5. In FY 2006, Cabezon stated, PRIDE "was required to make a one to one match," and its match expenditures were "\$75,405, leaving a shortfall of \$24,595." Id. Cabezon further stated that in FY 2007, PRIDE "was required to make a 125% match of DFC grant expenditures." Id. Since PRIDE "spent \$92,505 in DFC funding," Cabezon asserted, PRIDE "was required to spend \$115,631 in matching expenditures." Id. PRIDE's matching expenditures for FY 2007, Cabezon determined, totaled \$73,288, leaving a shortfall of \$42,343 in matching FY 2007 expenditures. Id.

By letter dated April 11, 2008, SAMHSA notified PRIDE of the site visit findings and gave PRIDE an opportunity to "support additional match contributions," by submitting additional information and source documents. SAMHSA Ex. 8, at 2. PRIDE submitted to SAMHSA additional documents on May 15, 2008 and July 22, 2008. SAMHSA Exs. 9, 11. After reviewing the submissions, SAMHSA issued a final decision on August 26, 2008, concluding that the additional documentation was sufficient to reduce the matching fund shortfalls to \$2,906 for FY 2006 and \$34,992 for FY 2007, resulting in a combined shortfall of \$37,898. SAMHSA Ex. 12; see also SAMHSA Ex. 10. SAMHSA determined that PRIDE's claimed matching expenditures for school assembly programs, office and meeting rental space, and personnel salaries and fringe benefits were unallowable.

PRIDE timely appealed SAMHSA's August 26, 2008 decision to the Board. PRIDE September 10, 2008 Notice of Appeal. In its notice of appeal, PRIDE requested an opportunity to provide SAMHSA with additional documentation to support the match expenditures for FYs 2006 and 2007 that SAMHSA found unallowable. Id. The Board granted PRIDE's request and directed SAMHSA to inform the Board whether the documentation provided a basis to reduce the disallowance. September 19, 2008 Acknowledgment of Notice of Appeal at 2. PRIDE furnished the additional documentation in a submission dated October 21, 2008. SAMHSA subsequently determined that the additional documentation provided no basis for reducing the shortfall identified in its August 26, 2008 final decision. November 24, 2008 SAMHSA Response. The parties thereafter submitted briefs and evidence and provided additional argument and documents in response to a Board order to develop the record.

Analysis

A. The Funding Years and Matching Requirements

On appeal, PRIDE argues that SAMHSA's calculation of the shortfall in matching expenditures was based on the erroneous premise that FYs 2006 and 2007 were the sixth and seventh years of the grantee's DFCSF funding. Applying the statute's match requirements, SAMHSA determined, PRIDE had to match its federal award funds with an equal amount of non-federal funds in FY 2006, and with 125% of its federal funding in FY 2007. PRIDE argues that FYs 2006 and 2007 were the first and second years of its DFCSF funding and that, consequently, it was required to match the federal award funds with an equal amount of non-federal funds in both years. Hence, PRIDE asserts, even if the Board were to uphold SAMHSA's determination that PRIDE failed to document certain matching expenditures, the amount of the FY 2007 shortfall should be substantially reduced.

1. The notices of grant award are the legal documents containing the terms of the awards to PRIDE for FYs 2006 and 2007.

We begin our analysis of this issue with the governing award documents, the NGAs for FYs 2006 and 2007. As noted above, the NGAs stated that the grants were subject to the terms and conditions of the notices themselves, the DFCSF statute, the applicable regulations, and the PHS GPS. SAMHSA Ex. 6, at 1; PRIDE February 13, 2009 submission, Ex. A-3. Under the PHS GPS, the terms of a grant award notice, including the grantee's specific match requirement, are "binding on both the grantee and the PHS awarding office until such time as they are modified by a revised award notice signed by the [grants management officer]." 1994 PHS GPS, 5. Award Process, Terms of Award.⁴ Similarly, the HHS GPS, which superseded the PHS GPS, provides that the NGA "is the legal document issued to the receiving organization that indicates an award has been made" and contains the terms of the award, including the amount of the matching or cost-sharing for each of the years unless modified by a revised NGA signed by the agency's Grants Management Officer. January 1, 2007 HHS GPS, Part I, HHS Grants Process, The Notice of

⁴ A copy of the 1994 PHS GPS, now inactive, is maintained for archival purposes at <http://grants.nih.gov/grants/policy/gps/index.html>

Award. SAMHSA does not contend that it is not bound by the terms of the NGAs here.

In this case, the NGAs for FYs 2006, 2007, and 2008 expressly awarded PRIDE \$100,000 in annual DFCSF federal funding for each of the three consecutive years. SAMHSA Ex. 6, at 1; PRIDE February 13, 2009 submission, Ex. A-3; SAMHSA Ex. 11, at 4. The NGAs also clearly required PRIDE to match the federal funds with \$100,000 in non-federal funds in each year. Id. Further, each NGA stated that the award was "based on an application submitted to, and as approved by, [SAMHSA] on the above titled project" Id. The applications for FYs 2006 and 2007, as also described above, included proposed budgets of \$200,000 in total project costs per year, with total charges to federal funds of \$100,000 and total charges to non-federal matching funds of \$100,000. October 21, 2008 PRIDE submission, Budget Detail Worksheets. In addition, the NGAs designated the "recommended future support years" following the FY 2006 award as years "02," "03," "04" and "05" of the project. SAMHSA Ex. 6, at 1; PRIDE February 13, 2009 submission, Ex. A-3; SAMHSA Ex. 11, at 4. Thus, under the terms of the NGAs themselves, PRIDE was required to match its FY 2006 and FY 2007 federal award funds with equal shares of non-federal funds. Furthermore, since the DFCSF statute requires grantees to provide more than an equal share of non-federal funds beginning in the seventh year (second cycle) of DFCSF funding, the NGAs for FYs 2006, 2007 and 2008 indicate that SAMHSA determined at the time it made the awards that the grantee was in its first DFCSF funding cycle.

In addition, while SAMHSA's May 2006 e-mails to PRIDE raised the issue of the grantee's funding year, and the Cabezon report and August 2008 final SAMHSA determination assumed that FYs 2006 and 2007 were funding years six and seven, SAMHSA failed to show that it revised the controlling NGAs to alter the awards' match requirements. Indeed, SAMHSA issued the FY 2008 NGA, providing for continuing equal-share matching by the grantee and reflecting an ongoing determination that PRIDE was in a first cycle of funding, on August 2, 2007, well over a year after the agency e-mails had raised the funding year issue. Moreover, as late as February 4, 2009, SAMHSA issued a revised award notice to close out the grant project, designating FY 2008 as year three of the project, with an approved annual budget of \$200,000, supported by equal, \$100,000-shares of federal and

non-federal funding. PRIDE February 13, 2009 submission, Ex. A-4 - A-6.⁵

Notwithstanding the express terms of the governing award documents, SAMHSA argues before the Board that the DFCS statute requires FYs 2006 and 2007 to be treated as years six and seven of the grantee's DFCS funding. The statute, SAMHSA contends, precludes an eligible coalition from receiving an initial award and renewal grants (for years one through five of funding) if that coalition has already received such awards. SAMHSA Br. at 4-5, citing 21 U.S.C. § 1532(b)(3). SAMSHA argues that "when PRIDE and the Newaygo County Coalition applied for DFCS funding in 2005, these entities were only eligible to apply for a year 6 grant, since the Coalition had by that time already received five years of DFCS funding" Id. SAMHSA contends that, "for DFCS funding purposes, the coalition did not change" because the 2005 coalition "served the same geographical area, had many of the same sector organizations, and had the same strategic plan, including the same mission and goals" of the prior coalition. SAMHSA June 26, 2009 reply to PRIDE May 27, 2009 submission. Moreover, SAMHSA argues, PRIDE knew or should have known that FYs 2006 and 2007 were not the first and second years of funding based on SAMHSA's 2005 request for DFCS applications, PRIDE's grant application (which acknowledged that the Newaygo Coalition previously received a grant), the FY 2006 NGA, and the May-June, 2007 correspondence between SAMHSA and PRIDE.

⁵ SAMHSA argues that "this February 2009 letter from SAMHSA is not a grant award letter, but merely documents the closeout of PRIDE's DFCS grant." SAMHSA Br. at 7, n.8. Further, SAMHSA states, "the reason that the letter contains erroneous information about the grant year is that PRIDE had still not submitted a revised budget to reflect . . . its correct grant year, even though it had notice of the correct grant years not only from the 2007 correspondence, but also . . . from the DFCS statute and SAMHSA's 2005 RFA." Id. These contentions have no merit. The document is self-titled a "Notice of Award" for the budget period ending September 29, 2008, and provides, "[SAMHSA] hereby revises this award" PRIDE February 13, 2009 submission, Ex. A-4. Further, SAMHSA's attempt to assign PRIDE responsibility for the document's "erroneous" grant year information is undercut by SAMHSA's own issuance of the original NGA for FY 2008 on August 2, 2007, well after the e-mail correspondence about the appropriate grant year.

In response to SAMHSA's contentions, PRIDE argues that when it applied for and received the FY 2006 award, it was a new applicant, acting as the fiscal agent of a new coalition - not the same entity that received DFCSF funding in the 1998-2002 period. PRIDE contends that the Newaygo County Prosecutor's Office, Office of Police-School Liaison, applied for and was the named grantee of the 1998-2002 DFCSF awards, then administered by the U.S. Department of Justice. In contrast, PRIDE argues, PRIDE acted as the fiscal agent of a newly formed Newaygo Coalition when it applied for and received the FYs 2006-2008 grants, administered by SAMHSA. PRIDE also argues that after 2002, the Newaygo Coalition's membership significantly changed, the coalition underwent a significant restructuring process, and it adopted new by-laws and elected officers.

2. SAMHSA's actions support the conclusion that the grantee was a new coalition eligible for first and second year DFCSF funding.

As summarized above, the DFCSF statute provides that the grant administrator "may award an additional grant . . . to an eligible coalition awarded" a first, five-year cycle of DFCSF funding. 21 U.S.C. § 1532(b)(3)(A). The statute does not, however, provide standards to evaluate whether a coalition with the same name as a previously-funded coalition may be considered a new coalition, eligible for first-cycle DFCSF funding, or if it is the same "eligible coalition" that previously received DFCSF funding. Nevertheless, the statute's coalition eligibility criteria are instructive to our analysis of the question. Under the criteria, a coalition must consist of identified representatives from 12 specified social sectors (e.g., youth, parents, businesses, the media, schools, and religious organizations). 21 U.S.C. § 1532(a)(2). Further, the coalition must demonstrate that its representatives have worked together on substance abuse reduction issues for a minimum period of time and that it has had "substantial participation from volunteer leaders in the community." 21 U.S.C. § 1532(a)(3). The coalition also must develop a mission and strategies consistent with program legislation and demonstrate that it is a sustainable, "ongoing concern." 21 U.S.C. § 1532(a)(4)-(5).

Consistent with the statute, the notice of available DFCSF funding for FY 2006 required each applicant to demonstrate its eligibility with "coalition supporting documentation." SAMHSA Ex. 5, at 9-10. The notice directed each applicant to include a roster that showed "the sector each coalition member

represent[ed], describe[d] each member's contribution to the work of the coalition, and identif[ied] the chair of the coalition." Id. SAMHSA also directed applicants to submit memoranda of understanding (MOUs) "between the applicant and key coalition members/organizations that will contribute substantially to achieving the goals and objectives of the coalition." Id. Thus, the eligibility criteria and documentation requirements in the statute suggest that a prospective grantee might reasonably be considered a new coalition, eligible for first year, DFCSF funding if its representatives and key coalition members differ significantly from those identified with a previously-funded coalition of the same name, and if there are other indicia that the organizations are not the same "ongoing concern."

In light of the evidence submitted, we conclude that it was reasonable to award funding to PRIDE and the Newaygo Coalition as a first and second year DFCSF grantee in FYs 2006 and 2007, as the controlling award documents provided. First, of the nine "key coalition members" that entered into MOUs with the Newaygo Coalition in 1999, and eleven such entities that entered into MOUs with the Newaygo Coalition for 2005, only one was the same. PRIDE May 27, 2009 submission, Ex. A; PRIDE April 29, 2009 submission, Ex. B. Further, of the individual representatives' names listed on the 2001/2002 and the 2005/2006 Newaygo Coalition rosters, less than half were the same. PRIDE May 27, 2009 submission at 2, Ex. B-4 - B-8. Specifically, 22 of the 38 individuals listed on the 2005/2006 roster were new representatives. Id. While many of the sector organizations represented on the rosters were the same, as SAMHSA argues, the 2005/2006 roster nevertheless appears to show the addition of over 10 new sector organizations. Id. In addition, the lapse in DFCSF funding of the Newaygo Coalition between FY 2002 and FY 2005, restructuring, and appointment of a new fiscal agent and DFCSF applicant are further indications that the entities were not the same "ongoing concern" even though they served the same geographical area and had similar missions and strategies. Accordingly, while PRIDE's FY 2006 application project information summary stated that the Newaygo Coalition was "established [in] 1992" and that it "received an award in FY 1998," SAMHSA could reasonably have concluded that other information supported its decision to award first cycle DFCSF funding to PRIDE and the Newaygo Coalition for FYs 2006-2008.

3. The facts do not warrant a voiding of the grant awards to PRIDE for FYs 2006 and 2007.

Finally, we note that SAMHSA's position that the DFCSF statute requires FYs 2006 and 2007 to be treated as years six and seven of the grantee's DFCSF funding in effect amounts to voiding a term of the FY 2007 award, which expressly provided that the grantee was responsible to match its federal funding with an equal-share of non-federal funds. Under 45 C.F.R. Part 16, the Board has the authority to review a voiding, described as "a decision that an award is invalid because it was not authorized by statute or regulation or because it was fraudulently obtained." 45 C.F.R. Part 16, App. A, C.(a)(4).

The facts here do not, however, warrant a voiding. As discussed above, the statute does not compel the conclusion that PRIDE was a previously-funded DFCSF grantee, but is sufficiently ambiguous to confer on the agency responsible for issuing grant awards the discretion to determine that a coalition with the same name as a previously-funded coalition is nevertheless a new entity that may be awarded first-cycle DFCSF funding. Here, SAMHSA reasonably exercised this discretion in awarding the DFCSF grants to PRIDE and the Newaygo Coalition as a new, first and second year DFCSF grantee in FYs 2006 and 2007.

Furthermore, we see no basis for voiding the grant under 45 C.F.R Part 16 on the basis that it was fraudulently obtained since the record supports no such finding, nor has SAMHSA argued that we should do so. Indeed, while the grantee sought first-cycle DFCSF funding in its grant applications, it was entirely forthcoming in stating that the Newaygo Coalition, established in 1992, had received a DFCSF award in 1998. SAMHSA Ex. 4, at 3.

Accordingly, we conclude that FYs 2006 and 2007 were the first and second years of the grantee's DFCSF funding and that PRIDE was required to match its federal funds with an equal amount of non-federal funds in both years. The record further indicates that PRIDE in fact claimed \$100,000 in federal funds in FY 2006 and \$92,505 in federal funds in FY 2007 for documented and allowable costs. SAMHSA Ex. 7, at 5; SAMHSA Br. at 6. Accordingly, we conclude, PRIDE was required to document \$100,000 in non-federal share for FY 2006 and \$92,505 in non-federal share for FY 2007 to justify its receipt of federal funds in those amounts.

B. *The Claimed Matching Expenditures*

We next address PRIDE's arguments on appeal that SAMHSA improperly determined that three groups of claimed matching expenditures were not allowable on the ground that they were not adequately documented. Below, we first summarize the generally-applicable documentation requirements. We then address each category of expenditures.

The uniform administrative requirements for awards to nonprofit organizations, such as PRIDE, are at 45 C.F.R. Part 74. The regulations require grantees to maintain accounting records supported by source documentation. 45 C.F.R. § 74.21(b)(7). Sections 74.23(a)(1) and 74.23(a)(4) establish that "all cost sharing or matching contributions, including . . . third party in-kind" contributions must, among other things, be "verifiable from the recipient's records" and "allowable under the applicable cost principles." Section 74.23(c) states that the "[v]alues for recipient contributions of services and property shall be established in accordance with the applicable cost principles."

The applicable cost principles for nonprofit organizations are in OMB Circular A-122, which is codified at 2 C.F.R. Part 230. 45 C.F.R. § 74.27. Under the principles, a cost is "allowable" (that is, it may be charged to a federal award) if, among other things, it is "reasonable for the performance of the award and . . . allocable thereto[.]" 2 C.F.R. Part 230, App. A, ¶ A.2.a. A cost also must be "adequately documented" to be allowed. 2 C.F.R. Part 230, App. A, ¶ A.2.g.

Based on the regulatory requirements, this Board has held that, when a grantor agency disallows a cost, the grantee bears the burden to prove, with appropriate documentation, that the cost is allowable under the cost principles and other relevant program requirements. See, e.g., Marie Detty Youth and Family Servs. Center, Inc., DAB No. 2024 (2006) (noting that "it is a fundamental principle of grants management that a grantee is required to document its costs"); Northstar Youth Services, DAB No. 1884 (2003) ("Once 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."). Similarly, "an elementary principle of grants administration is the requirement that a grantee have documentation that claimed expenditures were incurred to further

the purposes of the project." Hualapai Tribal Council, DAB No. 597, at 3-4 (1984).

1. PRIDE failed to sufficiently document the claimed matching expenditures for the school assembly programs for FYs 2006 and 2007.

PRIDE claimed as in-kind contributions totaling \$5,000 "school-based, peer-to-peer substance abuse prevention assemblies conducted in Newaygo County" in FYs 2006 and 2007. PRIDE February 13, 2009 submission, Ex. C-3; PRIDE October 21, 2008 submission. To support its claimed contributions, PRIDE listed the dates and locations of ten assembly programs and assigned a value of \$500 to each program. PRIDE October 21, 2008 submission; PRIDE February 13, 2009 Br. at 11-13, Ex. C-3. PRIDE also submitted a letter dated October 20, 2008 from senior advisor, Richard C. Wheeler, Sr., stating that "[b]ecause [PRIDE] neither sought nor collected money for these in-county programs, we obviously have no invoices, receipts or cancelled checks corresponding to [them]." Id. Mr. Wheeler stated, however, that "[t]he team does request and receive compensation for similar programs" conducted outside Newaygo County and that when such programs are conducted, PRIDE charges \$500 per program. Id. To support this contention, PRIDE furnished copies of invoices for assembly programs provided outside Newaygo County. PRIDE February 13, 2009 submission, Ex. C-4; PRIDE October 21, 2008 submission.

As noted above, the NGAs and governing regulations required PRIDE to maintain verifiable records showing that its matching expenditures were "allowable under the applicable cost principles." Further, under sections 74.23(c) and (d) of the regulations, the value of recipient contributions of professional and non-professional services that are "integral and necessary [to the] approved project or program" must "be consistent with [rates] paid for similar work in the recipient's organization."

Applying the foregoing standards to the record evidence, we conclude that PRIDE failed to furnish sufficient documentation to support the claimed school assembly program expenditures. As PRIDE acknowledged, it provided no invoices, receipts or other source documentation for the claimed in-kind expenditures to show that the assembly programs in fact occurred. While SAMHSA's August 26, 2008 final determination indicates that PRIDE may have submitted some program agendas to SAMHSA, PRIDE did not submit any to us. SAMHSA Ex. 12, at 1 (rejecting the

assembly match expenditures because PRIDE provided "[n]o documentation (i.e., invoices, receipts, cancelled checks) to support costs; assembly agendas are insufficient."). Further, the "invoices for some of the team's out-of-county programs" which, PRIDE alleged, show the value of the claimed in-kind donations to be \$500 per assembly since "the team collected a base amount of \$500 . . . for similar school programs," do not in fact support PRIDE's valuation of the programs, even if they did occur. PRIDE February 13, 2009 submission, Ex. C-3, C-4; October 21, 2008 submission. One invoice, dated April 23, 2007, charged the Bridgeport Public Library \$830 for a "PRIDE of Newaygo County Presentation on May 4, 2007." PRIDE October 21, 2008 submission. A second invoice, dated February 25, 2008, billed the West Middle School \$700 for a "PRIDE of Newaygo County Program" and \$300 for an "Additional PRIDE of Newaygo County Program." Id. Yet a third invoice, dated January 24, 2008, charged the Sparta Middle School \$1,000 as the "Program Fee for 2 PNC Programs." Id. The invoices do not include descriptions of the programs' contents, who provided them, or for how long, or otherwise explain why the charges for the assembly programs varied in price. Thus, the documentation does not establish that PRIDE consistently charged a base amount of \$500 for each of its assembly presentations or that the out-of-county programs and the donated, in-county programs were substantively comparable.

We also reject PRIDE's argument that the claimed expenditures are allowable since they were consistent with PRIDE's budget estimates, which SAMHSA previously approved. PRIDE February 13, 2009 Br. at 12. Section 74.23 of the regulations states that to be accepted, all matching contributions must not only be provided for in the approved budget, but must also be "verifiable from the recipient's records," and conform to other provisions of the cost sharing or matching regulation. 45 C.F.R. § 74.23(a). Thus, SAMHSA's prior approval of PRIDE's estimated matching expenditures for donated school assembly programs does not alone provide a sufficient basis for finding these expenditures allowable since PRIDE failed to maintain and furnish source documentation to verify that the costs were incurred and to justify PRIDE's valuation of them.

Accordingly, we sustain SAMHSA's determination that the claimed school assembly program expenditures are not allowable.

2. PRIDE failed to sufficiently document the claimed matching expenditures for office and meeting rental space for FYS 2006 and 2007.

PRIDE claimed as in-kind contributions totaling \$6,020 office and meeting rental space it provided in FYS 2006 and 2007. PRIDE argues that it provided this space for all of the coalition and sub-committee meetings and for "numerous parent meetings." PRIDE October 21, 2008 submission at 4. PRIDE states that it provided SAMHSA with "the dates and times of when the coalition meetings were held." Id. Further, PRIDE argues, it provided office and meeting space for Newaygo County Court Diversion programs that were supported by DFCSF funds. Id. "[I]f numerous documented meetings were taking place," PRIDE alleges, "and the Drug Free Communities Grant was being charged the same amount to help cover the cost of these meetings, then the additional monies needed to support these [DFC] programs had to come from somewhere." Id.

PRIDE also argues that its valuation of the donated space was based on advice provided by SAMHSA officials at new grantee meetings attended by PRIDE representatives. PRIDE February 13, 2009 Br. at 13-15. Moreover, PRIDE contends, the claimed rental costs were consistent with the SAMHSA-approved formulas in PRIDE's budget estimates. Id. at 15; PRIDE October 21, 2008 submission at 2-4. PRIDE additionally submitted financial reports showing its monthly mortgage and utility payments to support its claim. PRIDE October 21, 2008 submission.

The regulation at 45 C.F.R. § 74.23(h)(3) states that the "value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality." In addition, the applicable cost principles state that building rental costs "are allowable to the extent that the rates are reasonable in light of such factors as: Rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased." OMB A-122, 2 C.F.R. Part 230, App. B, ¶ 43. The applicable cost principles further provide that "[c]ompensation for the use of buildings . . . may be made through use allowance or depreciation" and that the "computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved" and other specified factors. OMB A-122, 2 C.F.R. Part 230, App. B, ¶ 11.

Applying these standards, we conclude that PRIDE failed to carry its burden to show that the claimed matching expenditures for donated office and meeting space were allowable. The record is devoid of documentation showing that the claimed value of the donated rental space was comparable to the fair rental value of comparable space in the grantee's locality. Furthermore, notwithstanding PRIDE's claim that its valuation was based on the advice of SAMHSA representatives, PRIDE has failed to supply evidence to support this allegation. In addition, section 74.23 of the regulations does not provide for mortgage and utility payments to be used to support the value of donated space. Finally, even if PRIDE could claim in-kind expenditures for donated office and meeting space through a use allowance or depreciation, we agree with SAMHSA that the documentation PRIDE submitted is insufficient since it contained no bases for determining the allocable in-kind share of the depreciation or use allowance. November 24, 2008 SAMHSA Response to Board Order at 2.

Accordingly, we sustain SAMHSA's determination that PRIDE's claimed matching expenditures for donated office and meeting rental space are not allowable.

3. PRIDE failed to sufficiently document the claimed matching expenditures for salaries and fringe benefits for FYS 2006 and 2007.

PRIDE claimed as matching expenditures totaling \$27,092 "Personnel Salaries & Fringe Benefits" for FY 2007. We first summarize the history of this claim to provide a framework for our analysis.

In its May 15, 2008 submission to SAMHSA, PRIDE claimed, among other things, \$23,564 in FY 2007 matching expenditures for the salaries of three employees (Paul Jay DeWispelaere (President/CEO), Nancy Dubois, and Wendy Jansson). SAMHSA Ex. 9, at 5. SAMHSA issued a determination on July 3, 2008, that, among other things, "the salary documentation was insufficient to verify any of the match." SAMHSA Ex. 10, at 2.

On July 22, 2008, PRIDE responded to SAMHSA's July 3, 2008 determination. SAMHSA Ex. 11. PRIDE stated in its response that it was providing SAMHSA additional documentation to support \$11,900 in claimed matching expenditures for FY 2007. Id. at 2. PRIDE noted, however, that "there still is an additional \$27,092 of match that SAMHSA says is still in question." Id. at 2. PRIDE then stated that it had "provided regular timesheets for

the President/CEO for the entire amount in question" and "[t]herefore . . . feels it has met the required proper documentation for the \$27,092 still in question." SAMHSA Ex. 11, at 2-3.

SAMHSA's August 26, 2008 final determination found unallowable \$27,092 in claimed matching expenditures for "Personnel Salaries & Fringe Benefits" for FY 2007. SAMHSA Ex. 12, at 1. SAMHSA stated in the final determination that the timesheets furnished by PRIDE did not "identify time charges to the DFC project." Id. at 2.

After filing its notice of appeal with the Board, PRIDE submitted copies of FY 2007 payroll summaries and time sheets for President/CEO Paul Jay DeWispelaere, as well as for PRIDE employees Nancy Dubois and Wendy Jansson. PRIDE's written arguments on appeal, however, discuss only the documentation of Mr. DeWispelaere's salary and fringe benefits. Accordingly, we first address below PRIDE's arguments relating to Mr. DeWispelaere's salary and fringe benefits. We then briefly discuss the documentation that relates to the other two employees' salaries and fringe benefits.

PRIDE acknowledges that its records do not show the specific amount of time that Mr. DeWispelaere worked on the DFC project prior to the pay period ending August 25, 2007. PRIDE February 13, 2009 Br. at 5-6. PRIDE argues, however, that it "was keeping track" of Mr. DeWispelaere's time "in a manner that was known at the time to be acceptable" and consistent with PRIDE's approved budget estimates. Id. at 5, 7-8. PRIDE argues that Mr. DeWispelaere held a salaried position in which he was "actively involved in all aspects of the SAMHSA/DFC grant" project and that he was "not required to keep regular time sheets" or keep track of his time "by class." Id. at 7-9; PRIDE October 21, 2008 submission at 5. Further PRIDE contends, once SAMHSA staff told PRIDE that it needed to keep records showing the amount of time spent on the DFC project, PRIDE did so. Id. Since prior to that time "that type of record keeping was not required by SAMHSA and was therefore never communicated by SAMHSA staff," PRIDE argues, it is unfair to impose the time allocation standard retroactively. Id.

We reject PRIDE's contentions. Under the governing cost principles of OMB Circular A-122, the "distribution of salaries and wages to awards must be supported by personnel activity reports" that: (1) "reflect an after-the-fact determination of the actual activity of each employee"; (2) "account for the

total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization"; (3) are "signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, [and indicate] that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports"; and (4) are "prepared at least monthly" and "coincide with one or more pay periods." 2 C.F.R. Part 230, App. B, ¶¶ 8.b., 8.m.(2).

OMB Circular A-122 further provides that "salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies." Id. at ¶ 8.m.(4). In the context of claimed matching expenditures for salaries and fringe benefits, therefore, the requisite personnel activity reports must show that the level of effort on grant project matters exceeded that for which the grantee charged the grant and received federal funding. The reports also must show that the additional effort was properly valued at the claimed amount of matching expenditures.

We conclude that the documentation furnished by PRIDE to support the claimed matching expenditures for salaries and fringe benefits is insufficient under the applicable legal requirements. PRIDE presented payroll summaries and bi-weekly timesheets for the President/CEO for FY 2007 which show the total number of hours that he worked for PRIDE. October 21, 2008 submission. The timesheets for the pay periods prior to the bi-weekly period ending August 25, 2007 do not, however, indicate the time that the President/CEO spent on activities that supported or benefited the DFCS project. Id. Thus, the timesheets for those prior pay periods do not meet the requirements for a "personnel activity report" under the governing cost principles. Further, while the timesheets beginning with the pay period ending August 25, 2007 do reflect the time the President/CEO worked on the DFC project, PRIDE has not demonstrated whether any of that time was in excess of the time for which the grantee charged the grant and received federal funding for FY 2007. Accordingly, we conclude that PRIDE did not meet its burden to demonstrate that the claimed matching expenditures for the President/CEO's salary and fringe benefits were allowable.

In addition, we reject PRIDE's contention that the President/CEO was not required to document the time he spent on the DFC project since he held a salaried position. Attachment B, subparagraph 8.m.(2) of the applicable cost principles states that claims for salaries and wages must be supported by reports "reflecting the distribution of activity of *each employee . . .* (professionals and nonprofessionals)" (emphasis added). The cost principles contain no exception for salaried employees. See Second Street Youth Center Foundation, Inc., DAB No. 1270 (1991)(rejecting, as inadequate under the cost principles, payroll timesheets and other evidence that, while showing the number of hours worked by the former executive director, failed to indicate whether those hours related to the Head Start program).

We also reject PRIDE's contentions that it had no notice of the recordkeeping requirements prior to August 2007 and that the claim should be allowed since it was consistent with the approved budget estimates. The NGAs expressly notified PRIDE that the grants were subject to the requirements at 45 C.F.R. Part 74 and that the grantee was responsible for ensuring that "all costs are allowable, allocable and reasonable." Further, the applicable cost principles expressly state that timekeeping "reports must reflect an after-the-fact determination of the actual activity of each employee. Budget estimates . . . do not qualify as support for charges to awards." 2 C.F.R. Part 230, App. B, ¶ 8.m.(2)(a). Moreover, we question PRIDE's reliance on the budget estimate for FY 2007 since it reflected non-federal expenditures for the President/CEO's salary of only \$4,962. PRIDE October 21, 2008 submission.

Finally, we conclude that the documentation relating to employees Nancy Dubois and Wendy Jansson provides no basis for allowing claimed matching expenditures for salaries and fringe benefits for FY 2007. While PRIDE furnished copies of FY 2007 bi-weekly timesheets reflecting allocations of these employees' efforts, the timesheets for Ms. Dubois show that *she did not engage in any DFCSF work*. PRIDE October 21, 2008 submission. The timesheets for Ms. Jansson show that she worked only the amount of time for which, according to PRIDE's budget estimates and not otherwise shown, PRIDE received federal funding. Id.

Accordingly, we sustain SAMHSA's determination that the FY 2007 claimed matching expenditures for salaries and fringe benefits are not allowable.

Conclusion

For the reasons discussed above, we conclude that PRIDE was required to match its federal funding with \$100,000 in non-federal funds in FY 2006 and \$92,505 in non-federal funds in FY 2007. We further sustain SAMHSA's determination that PRIDE failed to sufficiently document the claimed matching expenditures for assembly programs, rental space, and salaries and fringe benefits for FYs 2006 and 2007.

Accordingly, we sustain SAMHSA's determination that PRIDE had a matching expenditures shortfall of \$2,906 for FY 2006. We further conclude that PRIDE had a matching expenditures shortfall of \$11,866 for FY 2007, based on our determination that PRIDE's match requirement for that year was \$92,505 and record evidence that PRIDE sufficiently documented \$80,639 in allowable matching expenditures for FY 2007. SAMHSA Exs. 8, at 2; 12, at 1. Thus, we determine that PRIDE had a combined FY 2006-2007 shortfall in matching expenditures of \$14,772. As a result of this shortfall, we conclude, PRIDE was not entitled to \$14,772 of the federal funds it received, and it must return that amount to the Department of Health and Human Services.

_____/s/_____
 Judith A. Ballard

_____/s/_____
 Leslie A. Sussan

_____/s/_____
 Stephen Godek
 Presiding Board Member