Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Loving Arms Learning Center
Docket No. A-18-73
Decision No. 2921
January 17, 2019

DECISION

Loving Arms Learning Center (Loving Arms) appeals the April 30, 2018 decision of the Administration for Children and Families (ACF) disallowing $11,748 in federal funding provided to Loving Arms for its Head Start program for the period of performance ending October 31, 2017 (fiscal year (FY) 2017). ACF based the determination on an Office of Head Start (OHS) monitoring report that found Loving Arms spent Head Start grant funds awarded for FY 2017 on expenses incurred for the period of performance ending October 31, 2018 (FY 2018). For the reasons discussed below, we uphold the disallowance in full.

Legal background

The Head Start program, authorized under the Head Start Act, 42 U.S.C. § 9801 *et seq*., as amended, provides comprehensive early child education, nutrition, and health services to low-income children and their families. The recipient of a Head Start grant must (with some exceptions not relevant here) comply with cost principles in Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Non-Profit Organizations"[1] and with the uniform grant administrative requirements at 45 C.F.R. Part 75.[2] 45 C.F.R. §§ 75.100, 75.101(b)(1), 75.403.

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[1] OMB Circular A-122 was previously codified in Appendices to 2 C.F.R. Part 230. *See* 70 Fed. Reg. 51,927 (Aug. 31, 2005); 2 C.F.R. Part 230 (Jan. 1, 2013). In December 2013, OMB consolidated the content of OMB Circular A-122 and other OMB circulars into a streamlined set of uniform administrative requirements, cost principles, and audit requirements for federal awards, currently published in 2 C.F.R. Part 200. *See* 78 Fed. Reg. 78,590 (Dec. 26, 2013). The consolidation made no changes relevant to this case.

[2] Effective December 26, 2014, the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards" published in 45 C.F.R. Part 75 superseded Part 74 of Title 45 of the Code of Federal Regulations. *See* 79 Fed. Reg. 75,872, 75,875-876 (Dec. 19, 2014). We cite to the Part 75 regulations, which was in effect at the time at issue here.

The Part 75 grant requirements provide that a Head Start grantee receives discrete annual "federal awards," with each award corresponding to a specific "period of performance." A "[p]eriod of performance" is the "time during which the non-Federal entity may incur new obligations to carry out the work authorized under the [f]ederal award." 45 C.F.R. § 75.2 (also defining "[f]ederal award"). The term "[o]bligations" means "orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period." *Id.* An award recipient "may charge to the [f]ederal award only allowable costs incurred during the period of performance" and any authorized pre-award costs. *Id.* § 75.309(a).

If a grantee "fails to comply with the [f]ederal statutes, regulations, or the terms and conditions of a [f]ederal award," the awarding agency may "[d]isallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance." 45 C.F.R. § 75.371(b); *see also Bright Beginnings for Kittitas Cty.*, DAB No. 2623, at 2 (2015) (stating that compliance with the regulatory requirements is a term and condition of a Head Start grant); *Tex. Migrant Council*, DAB No. 842 (1987) (sustaining a disallowance based on a violation of federal cost principles); *Greater Philadelphia Health Action, Inc.*, DAB No. 1605 (1996) (upholding a disallowance of costs that were not "reasonable" under the cost principles).

Case background

By letter dated April 30, 2018 (Disallowance Letter), ACF notified Loving Arms that it was disallowing $11,748 for FY 2017. The Disallowance Letter, quoting the findings cited in an OHS monitoring report dated April 18, 2018, stated in relevant part:

> The grantee did not ensure charges to the Federal award were only for allowable costs incurred during the period of performance. Health supplies obligated in, and of benefit to, the award period ending October 31, 2018 were charged to the prior period ending October 31, 2017.
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> A review of the supporting documentation for health supplies purchased from the School Health Corporation on Purchase Order 660 found the grantee ordered hearing testing equipment, two automated external defibrillators, cabinets and miscellaneous health supplies for a total of $11,748. Although the Purchase Requisition was dated October 27, 2017, and the four invoices attached to the requisition were all dated October 31, 2017, the order confirmation email from the vendor and packing slips for each shipment noted November 1, 2017 as the actual order date. A review

> of the School Health Corporation statement, dated February 1, 2018, found the order was fulfilled in four shipments with dates ranging from November 6, 2017 to January 19, 2018. A review of the General Ledger for the period November 2016 to October 2017, confirmed the $11,748 payment to the School Health Corporation was charged to the Head Start grant as of October 31, 2017.
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> In an interview, the Data Management/Program Compliance Manager confirmed the order was placed on November 1, 2017. A review of management meeting minutes from the November 3, 2017 conference call noted two orders were delayed to November 1, 2017 since both required the Board's approval. The meeting minutes also noted the invoice was to be held if not dated October 31, 2017.
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> The grantee did not ensure charges to the Federal award were only for allowable costs incurred during the funding period; therefore, it was not in compliance with the regulation.

Disallowance Letter at 1-2 (internal quotation marks omitted).

Loving Arms appealed the disallowance to the Board on May 30, 2018 via the Departmental Appeals Board's E-File system. Loving Arms' May 30, 2018 online filing consisted of ACF's Disallowance Letter, as well as 8 pages of unmarked exhibits. Loving Arms also filed a paper appeal, postmarked May 30, 2018, that consisted of the same documents as the online filing, as well as a one page letter (ACF Appeal) that indicated Loving Arms was appealing the $11,784 disallowance and stated briefly the arguments on which the appeal is based. The Board issued a letter acknowledging receipt of the appeal on June 4, 2018, and instructed Loving Arms that, within 30 days of receiving the acknowledgment letter, it should submit a written statement of its arguments concerning why the appealed decision is wrong (appeal brief), and copies of the documents on which its arguments are based (appeal file).

On August 13, 2018, Loving Arms filed a Request for Dismissal, stating that Loving Arms had been closed and that the "supplies in question were turned over . . . for liquidation." On August 14, 2018, the Board informed Loving Arms that it would close the case, leaving the disallowance final, unless Loving Arms provided notice that it still intended to keep the case open and file briefing. On August 15, 2018, Loving Arms provided notice that it intended to file a brief contesting the disallowance. On that same day, the Board extended the deadline for Loving Arms to file an appeal brief and appeal file until August 29, 2018. Loving Arms did not file an appeal brief and appeal file by the deadline, but notified the Board on August 29, 2018 that it wished to pursue

mediation with ACF in this matter. On August 30, 2018, ACF notified the Board it was not interested in mediation. On October 11, 2018, the Board informed the parties that, because Loving Arms had not filed an appeal brief and appeal file, it would consider the record closed and proceed to decision unless ACF objected within 10 days. On October 11, 2018, ACF notified the Board that it did not object to closing the record and proceeding to decision.

Analysis

Under the governing regulations, within 30 days of receiving an acknowledgment of its appeal, an appellant is responsible for submitting to the Board "(1) An appeal file containing the documents supporting the claim, tabbed and organized chronologically and accompanied by an indexed list identifying each document;" and "(2) A written statement of the appellant's argument concerning why the respondent's final decision is wrong . . . ." 45 C.F.R. § 16.8(a). The Board repeatedly notified Loving Arms of these procedural requirements, and twice extended the deadline to comply. Nevertheless, Loving Arms did not submit an appeal brief or appeal file for the Board's consideration, nor did it seek a further extension or offer an explanation for its inaction. Our review of the record is thus limited to the documents provided by Loving Arms in its initial submissions.

ACF based the disallowance on its finding that "[h]ealth supplies obligated in, and of benefit to, the" FY 2018 period of performance "were charged to" the FY 2017 period of performance. Disallowance Letter at 1. The regulations provide that a grantee "may charge to the [f]ederal award only allowable costs incurred during the period of performance."[3] 45 C.F.R. § 75.309(a). Moreover, the Board has long upheld disallowances based on the principle that "grant funds earmarked for one funding period may not be used to pay costs incurred outside that period." *Teaching & Mentoring Communities, Inc.*, DAB No. 2790, at 10 (2017); *see also Council for the Spanish Speaking*, DAB No. 2718, at 6 (2016) (The period of performance limitation "reflects the general requirement in OMB Circular A-122 that allowable costs charged to a federal award must be allocable to the award."); *Central Piedmont Action Council, Inc.*, DAB

[3] There are some exceptions to this rule, but none that are relevant here. The regulations authorize an exception for pre-award costs "only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the HHS awarding agency." 45 C.F.R. §§ 75.458, 75.309. Another exception allows the grantor federal agency to approve the "carryover" (or "carry forward") of a budget period's unobligated grant funds to a future budget period. *See* 45 C.F.R. §§ 75.309(a) ("Funds available to pay allowable costs during the period of performance include . . . carryover balances.") and 75.308(b), (d)(3) (permitting the grantor agency to authorize the "[c]arry forward [of] unobligated balances to subsequent funding periods"). Loving Arms does not claim that the prerequisites for either of these exceptions, or any other, existed in this case.

No. 1916, at 3 (2004) ("[G]rant funds awarded for one funding period [must] be used to pay for expenses from that year only, and not for any other program year."); *id*. at 4 ("Grant expenditures incurred outside of the applicable budget periods are not allocable to awards for those budget periods, and this violation of the requirement of allocability is a basis for a disallowance.").

Loving Arms does not dispute that it placed the order in question on November 1, 2017, nor does it dispute that the purchase was charged to the Head Start grant as of October 31, 2017. Rather, Loving Arms asserts that its employee failed to maintain an accurate accounting ledger. Loving Arms contends that the supplies were "ordered on November 1, 2017" and "paid in the correct grant year of 2018 . . . ." Loving Arms Appeal. Thus, Loving Arms asserts, the accounting "ledger should reflect" the date of November 1, 2017 rather than October 31, 2017. *Id*. Loving Arms also asserts that the same employee "wrote misleading information" in the accounting ledger for a different purchase order placed on October 31, 2017, and implies that the employee may have confused the two purchase orders. *Id*.

Loving Arms' arguments have no merit. Under the applicable regulations, a grantee must have in place a financial management system that provides "[a]ccurate, current, and complete disclosure of the financial results of each [f]ederal award," "[r]ecords that identify adequately the source and application of funds for HHS-sponsored activities" and "[e]ffective control over and accountability for all funds, property and other assets." 45 C.F.R. § 75.302(b)(2)-(4); *see also Touch of Love Ministries, Inc.*, DAB No. 2393, at 3 (2011) ("[A] grantee bears the burden of documenting the existence and allowability of its expenditures of federal funds."). That an employee failed to maintain an accurate accounting ledger, or erred in charging the supplies to the wrong fiscal year, does not exculpate Loving Arms from its burden to "adequately safeguard all assets and assure that they are used solely for authorized purposes." *Id.* § 75.302(b)(4). Moreover, to the extent that Loving Arms requests equitable relief, the Board has consistently held, in accordance with 45 C.F.R. § 16.14, that it is bound by all applicable laws and regulations and has no authority to waive a disallowance based on equitable principles. *See, e.g., Kids Central, Inc.*, DAB No. 2897, at 15 (2018) (and the cases cited therein).

Here, it is undisputed that Loving Arms spent grant funds awarded for FY 2017 on costs incurred after the end of the performance period. We therefore find no reason to disturb ACF's disallowance.

Conclusion

For the reasons set out above, we uphold ACF's disallowance of $11,748.

/s/
Sheila Ann Hegy

/s/
Constance B. Tobias

/s/
Leslie A. Sussan
Presiding Board Member