

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Asian Media Access
Docket No. A-09-125
Decision No. 2301

DATE: February 4, 2010

DECISION

Asian Media Access (AMA), a Minnesota nonprofit organization, appealed the August 12, 2009 decision by the Administration for Children and Families (ACF) to terminate AMA's Transitional Living Program (TLP) grant. The grant obligated AMA to plan and develop a shelter for runaway and homeless youth during the first year of the grant, and to actually begin providing shelter and other services to that population no later than September 2008. The evidence of record shows that AMA materially failed to satisfy those terms and conditions. For that reason, we uphold ACF's decision to terminate AMA's TLP grant.

Legal Background

ACF administers discretionary grants authorized by the Runaway and Homeless Youth Act (RHYA),¹ 42 U.S.C. §§ 5701-5752. Among the types of grants authorized by the RHYA are TLP grants, which "address the longer term [non-emergency] housing needs of youths and assist them in developing skills that promote independence and prevent future dependency on social services." 65 Fed. Reg. 50,139-50,140 (Aug. 17, 2000).

The RHYA specifies the services that an organization must agree to provide in order to receive federal financial assistance for a TLP. See 42 U.S.C. § 5714-2(a). Among other things, a TLP grantee must agree to provide "homeless youth" with: (1)

¹ Congress amended the RHYA during the term of AMA's grant. Pub. L. No. 110-378, 122 Stat. 4068 (2008). Those recent amendments are not material to our analysis.

shelter (such as a group home, host family home, or supervised apartment); and (2) services to help them become self-sufficient. Id.

Non-governmental organizations (such as AMA) that receive a federal grant or other "award" are subject to the provisions in Part 74 of title 45 of the Code of Federal Regulations. Vance-Warren Comprehensive Health Care, Inc., DAB No. 2180, at 2 (2008). Those regulations authorize the awarding agency to terminate an award if the "recipient materially fails to comply with the terms and conditions of [the] award, whether stated in a Federal statute or regulation, an assurance, an application, or a notice of award[.]" 45 C.F.R. § 74.62(a)(3).

Case Background

The evidence of record in this appeal establishes the following undisputed facts.²

AMA is a nonprofit organization "dedicated to using multi-media and technology as tools" to promote education, cultural enrichment, and other social goals. ACF Ex. 2, at 1-2; ACF Ex. 7, at 3.

In March 2007, ACF notified the public that it was seeking applications for grants to fund TLPs for runaway and homeless youth. ACF Ex. 1. Consistent with the RHYA, ACF's grant announcement stated that a TLP grantee was obligated to offer, either "directly or indirectly," certain "mandatory services" to homeless youth, including: (1) "shelter," such as a group home,

² In support of its appeal, AMA furnished four exhibits containing a variety of documents, including ACF's August 12, 2009 notice of termination, internal progress reports, planning documents, and mental health assessments of certain clients (whose names have been redacted). AMA's exhibits are not clearly marked or paginated; thus, when discussing those exhibits, we will identify them by describing their relevant contents.

ACF submitted 16 numbered exhibits, including reports summarizing the findings of two onsite visits of AMA's TLP (ACF Exhibits 4 and 6) and declarations from the two persons who made those visits - ACF specialist Niki Lee and peer reviewer Harry Evans III, M.S.W (ACF Exhibits 14 and 15). AMA did not submit a reply to ACF's submissions.

host family home, or supervised apartment; (2) "services, including information and counseling services in basic life skills, which shall include money management, budgeting, consumer education, and use of credit, parenting skills (as appropriate), interpersonal skill building, educational advancement, job attainment skills[,] and mental and physical health care"; and (3) "outreach programs designed to attract individuals who are eligible to participate in the project." Id. at 2.

On May 8, 2007, AMA applied for a grant to fund a five-year TLP called Ramen Ya. ACF Ex. 2. As part of its TLP, AMA planned to establish and operate an eight-bed shelter for Asian American and Pacific Islander runaway and homeless girls between the ages of 16 and 18.³ Id. at 18. According to AMA's grant application, the shelter was to be located at 2418 Plymouth Avenue North in Minneapolis, Minnesota. Id. at 28. The application also indicated that AMA would provide a variety of counseling, education, and other "non-shelter" services to its "target population" of Asian-American and Pacific Islander homeless and runaway girls.⁴ Id. at 18, 28 ("Objective 2.1"). In addition, the grant application indicated that Ramen Ya would perform "outreach and health prevention activities [in order] to support runaways and homeless youth on the street." Id. at 20. AMA

³ AMA intended to focus its TLP on homeless and runaway Hmong-American girls. ACF Ex. 2, at 18.

⁴ According to the project abstract submitted with AMA's grant application, AMA planned to provide the following non-shelter services to runaway and homeless youth: "case management, individual counseling, and support groups; transportation and translation services to the courts and health care facilities; health/mental health assessment through Children's Hospital, and referrals for chemical dependency treatment and other needed health treatments; educational assessment and referrals to educational programs; budgeting, financial management, and other independent living skills training; advanced technology training, such as: multi-media production, and web skills; helping on career planning, and job placement; assistance in securing permanent housing appropriate to needs and income; counseling regarding violence, prostitution, substance abuse, sexually transmitted diseases, and pregnancy." ACF Ex. 2, at 18, 19 (¶ I.a.).

estimated that Ramen Ya would provide non-shelter services to 245 runaway or homeless youth per year. Id. at 18.

A "Work Plan" included with AMA's grant application indicated that AMA would plan and develop its runaway and homeless youth shelter during the first year of its TLP and begin operating the shelter by September 2008, the beginning of the program's second year. ACF Ex. 2, at 35; see also id. at 28. The Work Plan further indicated that AMA would form an "Advisory Committee" to oversee the TLP. Id. at 35. AMA requested \$200,000 for the initial year of the TLP, \$28,000 of which was to be spent on renovating the building at 2418 Plymouth Avenue. Id. at 11, 18.

On September 25, 2007, ACF approved AMA's grant application, awarding \$200,000 for the initial year of the project (September 30, 2007 through September 29, 2008). ACF Ex. 3, at 1. ACF's approval was memorialized in a Financial Assistance Award notice, to which ACF attached a list of "Standard Terms and Conditions." Id. at 5-7.

On May 21, 2008, almost eight months after ACF awarded the grant, Niki Lee, a runaway and homeless youth specialist employed by ACF, and peer reviewer Harry Evans III, M.S.W. visited AMA to assess its progress in establishing the Ramen Ya TLP. ACF Exs. 6, 14 (¶ 3) and 15 (¶ 2). They found that AMA had not yet developed or opened the shelter described in its grant application. ACF Ex. 6, at 1. Lee and Evans inspected 2418 Plymouth Avenue, the site of the planned shelter. ACF Ex. 14 ¶ 8. The building on the site was padlocked, had only one bathroom (located in the basement), and needed a total interior renovation. Id.; ACF Ex. 6, at 1.

Lee and Evans also visited AMA's administrative office to review project files and interview key personnel, including AMA's Executive Director, Ange Hwang. ACF Ex. 6. In his report of the May 2008 visit, Evans described AMA's office as disorganized and lacking a formal filing system. Id. at 2. Evans further noted that he had been unable to locate key information about employees, such as position descriptions, salaries, and evaluations. Id. at 3. Evans also indicated that AMA had not performed state-mandated background checks on its employees, lacked documentation of personnel decisions, had failed to produce evidence of oversight of the TLP by its Board of Directors, and appeared to lack knowledge or understanding of federal grant requirements. Id. at 2-4; see also ACF Ex. 14 ¶ 16. Executive Director Hwang informed the reviewers during the visit that AMA's efforts to renovate 2418 Plymouth Avenue and obtain necessary licenses, permits, and zoning changes for

the planned shelter were progressing, but she did not offer detailed information about those efforts. ACF Ex. 6, at 1.

After the May 2008 site visit, ACF placed AMA on a funding restriction that required it to obtain approval in advance from ACF for grant-related expenditures. ACF Ex. 15 ¶ 5. ACF also referred AMA to the University of Oklahoma's Runaway and Homeless Youth Training and Technical Assistance Centers (RHYTTAC). During the spring and summer of 2008, RHYTTAC provided AMA with "Tier 3" technical assistance (the highest level of technical assistance available) to help it develop the shelter and begin providing other services to runaway and homeless youth. ACF Exs. 5 & 9. Because of the poor condition of the Plymouth Avenue property and the need to establish AMA's TLP quickly, RHYTTAC urged AMA to abandon the group-home model for its shelter and instead adopt a "scattered site" housing model. ACF Ex. 5, at 1-2. Despite this advice, AMA continued to pursue its initial strategy of establishing a group home. However, in order to avoid certain zoning restrictions imposed by the City of Minneapolis, AMA abandoned (for a time) its effort to obtain the required state license for a youth-focused group home (a license called a Transitional Services Certification) and instead sought an Independent Living Assistance (ILA) license, which was applicable only to *non-residential* programs and thus inappropriate for the group home that AMA was trying to establish.⁵ ACF Ex. 5, at 1-2; ACF Ex. 8, at 31, 39, 41, 48, 53. At some point during the summer of 2008, ACF, RHYTTAC, and the Minnesota Department of Human Services held a conference call to discuss the status of AMA's license application. ACF Ex. 5, at 2. During that call, the participants determined that AMA had not provided the state licensing agency with sufficient information about its proposed housing facility.⁶ Id.

⁵ Section 245A.22 of the Minnesota Statutes provides that "independent living assistance for youth" means a "nonresidential program that provides a system of services that includes training, counseling, instruction, supervision, and assistance provided to youth according to the youth's independent living plan . . ." (emphasis added).

⁶ Because of neighborhood opposition to the proposed use of the Plymouth Avenue property, AMA pursued alternative sites for its shelter, but these alternatives did not materialize because of zoning and other obstacles. See ACF Ex. 8 and material attached to AMA's Notice of Appeal.

On August 21, 2008, after consultation with ACF, AMA's Executive Director informed ACF that it was once again seeking a Transitional Services Certification for its planned shelter. ACF Ex. 8, at 53. Also on that date, AMA asked ACF to release additional funds and give it more time (until December 1, 2008) to open the shelter. Id.

On August 28 and 29, 2008, Lee and Evans visited AMA a second time but found that it had made little if any progress in establishing its TLP. ACF Ex. 4, at 2; ACF Ex. 14 ¶¶ 9-15; ACF Ex. 15 ¶ 2. They found the 2418 North Plymouth Avenue building still padlocked and apparently undisturbed since the previous visit. ACF Ex. 14 ¶ 15. When Evans asked to interview Ramen Ya clients,

[Executive Director] Hwang brought two boys who appeared to be in their mid teens to talk with me. They told me that they were being paid to make music videos. They lived at home and were not familiar with a program for runaway and homeless youth. They said they had been paid to speak with me.

Id. ¶ 14.

In their "Final Report" on the two site visits, Lee and Evans concluded that as of late August 2008, AMA did not have a functioning TLP, had made "little if any progress" despite receiving substantial technical assistance, and appeared to lack the capacity to fulfill grant requirements. ACF Ex. 4, at 2. In support of that conclusion, the Final Report set out numerous findings, including the following:

- "[T]he grantee was not able to present firm plans related to the actual TLP [shelter] site. During each conversation about the actual TLP site, the grantee kept making conflicting statements about the actual site, the current status of state licensing, the status of pending or requested changes in local zoning codes, the current status of requested building permits, or a realistic timetable for the rehabbing of the proposed TLP site." ACF Ex. 4, at 8.
- "The grantee does not have the ability to provide youth with any type of emergency or short term shelter. The grantee was unable to provide any type of documentation of agreements or M.O.U.s with other community providers related to temporary shelter or referral services to youth in crisis. The grantee produced no evidence of

referral services to other TLP programs in the community. . . . The grantee did[,] however, state that they are providing a wide array of emergency services to the targeted population mentioned in their grant application, but was unable to provide any documentation." ACF Ex. 4, at 7; see also id. at 9.

- Although the grantee presented the reviewers with "client files," it was "unclear if these youth or their families actually exist, or meet the requirements of the grant and related target population. . . . Many of the youth presented by the grantee as receiving RHY [runaway and homeless youth] TLP services were actually a part of other [AMA] programs such as graphic arts, video production and photography, for example. . . . Each youth interviewed indicated that they are currently living at home and have no need to seek any type of long term shelter or care. The review team was unable to determine if any type of individual, family, group or peer counseling is occurring." ACF Ex. 4, at 10.
- "The grantee was unable to provide any documentation related to outreach and community education services." ACF Ex. 4, at 4. Documentation presented by AMA indicated that its efforts focused on youth enrolled in its media and graphics arts program, which rented classroom space at the Plymouth Christian Youth Center (PCYC), rather than on the TLP's target population of homeless girls. Id. Although AMA had charged to its TLP grant a full-time staff position called Community Outreach Services Coordinator, there "was not any documentation presented to the review team that the program engages in street outreach services, particularly . . . to reach out to the larger community beyond the PCYC youth enrolled in media arts classes." Id. at 15.
- "The grantee was not able to provide any serious documentation related to individual intake and case planning." ACF Ex. 4, at 6.
- "All information related to staffing and staff development as provided by the grantee is suspect, and lacks transparency. It is indeterminate who performs what functions . . . In interviews and phone conversations with staff, particularly the Executive Director and Program Director[,] their responsibilities

were blurred and entailed performing activities beyond the scope of their positions." ACF Ex. 4, at 22.

- The grantee was "not engaging in effective ongoing project planning, involving staff, the Board [of Directors], Advisory Committee, Youth and their parents to ensure that the program is offering comprehensive, high quality services that successfully meets the needs of the RHY community." ACF Ex. 4, at 23. During the first nine months of the project, AMA changed Program Directors four times, but failed to obtain ACF's prior approval for those changes, as it was required to do under the grant. Id. at 23; see also ACF Ex. 15 ¶ 8; 45 C.F.R. § 74.25(c)(2).
- "The composition of [AMA's] Board [of Directors] and Advisory committee, [and] their relationship to each other in providing governance, oversight, guidance and involvement[,] is questionable." ACF Ex. 4, at 25.
- "The grantee was not able to provide any type of reports or data related to the operation of a TLP that realistically demonstrated actual services provided to RHY specific clients, and to targeted population in the grant application." ACF Ex. 4, at 26.

On August 12, 2009, ACF notified AMA by letter that its TLP grant was being terminated because it had "materially failed to comply with the terms and conditions of its grant award." In support of that conclusion, ACF found that AMA had failed to provide shelter to homeless youth, as required by the RHYA, and lacked the "capability" to do so. ACF also found that AMA had failed to provide homeless youth with the counseling, educational, and other services that TLP grantees are obligated to provide as a condition of receiving federal grant funds. Moreover, said ACF, "insofar as Asian Media Access is providing any services, onsite reviews revealed that the young persons receiving the services were not homeless youth, as defined in the [RHYA], regulations[,] and grant announcement." In addition, ACF found that AMA had failed to comply with financial management and reporting requirements in 45 C.F.R. Part 74.

By letter dated September 1, 2009, AMA notified the Board that it wished to appeal the termination. Attached to AMA's notice of appeal was an undated memorandum and a second letter (also dated September 1, 2009). In those documents, AMA admitted that it had not yet provided shelter to homeless youth but claimed that city or state regulations had erected "tremendous

obstacles" to achieving that objective. AMA also disputed ACF's finding that it failed to provide counseling and other non-shelter services to homeless youth. In addition, AMA claimed that it had been unfairly treated by ACF and its specialist, Niki Lee.

Discussion

As noted, the federal statute which authorized AMA's TLP grant - the RHYA - provides that a TLP grantee must agree to provide "homeless youth" with "shelter" and other supportive services as a condition of receiving federal financial assistance. 42 U.S.C. § 5714-2(a). Similarly, the grant announcement under which AMA sought its TLP grant states that grantees "are required to provide homeless youth with stable, safe living accommodations and services that help them develop the skills necessary to move to independence." ACF Ex. 1, at 1-2 (emphasis added). Consistent with the authorizing statute and ACF's grant announcement, AMA's TLP grant application included a Work Plan which indicated that AMA would operate a runaway and homeless youth shelter and achieve other objectives according to a specific timetable. ACF Ex. 2, at 35-36.

In approving AMA's TLP grant application, ACF made its award of financial assistance subject to various "standard terms and conditions." One of the standard terms and conditions made the grant subject to the HHS Grants Policy Statement (HHS GPS). ACF Ex. 3, at 7. The HHS GPS provides that AMA's grant was "subject to the requirements of the authorizing legislation" (ACF Ex. 16, at 5), which means that AMA was obligated to provide shelter and other services to homeless youth, as the RHYA requires.⁷

The terms and conditions of the grant also obligated AMA to "carry out the project according to the application as approved . . . including the proposed work program" (emphasis added). ACF Ex. 3, at 6 ¶ 6. AMA's "proposed work program" was, of course, the TLP Work Plan set out in its grant application. That plan called on AMA to meet the following objectives: (1) plan and develop a runaway and homeless youth shelter during the first year of the grant; (2) begin operating that shelter no

⁷ The HHS GPS further states that "[n]otice of requirements not specified in the HHS GPS generally will be provided in the [notice of grant award], but such notice is not required for the award to be subject to the requirements of pertinent statutes and regulations." ACF Ex. 16, at 5.

later than September 2008; and (3) begin providing runaway and homeless youth with counseling and other non-shelter services no later than September 2008. ACF Ex. 2, at 35-36. Because the grant's terms and conditions required AMA to carry out the Work Plan as approved, meeting these specific work objectives was also a term and condition of AMA's grant. The record shows that AMA did not meet the objectives specified in the Work Plan.

1. *AMA materially failed to comply with the terms and conditions of its TLP grant because it did not meet the timetable in its Work Plan to plan and develop its youth shelter during the grant's first year and did not begin operating the shelter by September 2008.*

The evidence of record indicates that when ACF's reviewers first visited AMA in May 2008, they found that AMA had made little or no progress in planning and developing its shelter. See ACF Ex. 6. According to one of the reviewers, the proposed shelter site identified in the grant application (2418 Plymouth Avenue) needed a total interior renovation, and AMA was unable to produce documentation of any firm or specific plans to renovate that building or establish the shelter at some other location. *Id.* During another site visit in August 2008, ACF's reviewers concluded that AMA still had made no significant progress and still had no firm plans to develop the shelter. ACF Ex. 4, at 8.

Likewise, we find in the documents submitted by AMA in this proceeding no evidence that during the first year of its grant AMA had - or was in the process of implementing - a well-developed plan to develop and open a shelter, at the Plymouth Avenue address or elsewhere. In fact, documents submitted by AMA indicate the opposite. For example, Attachment 1 to AMA's appeal letter includes a table entitled "Establishing the Shelter Progress Report." That report, which AMA prepared, supports the ACF reviewers' conclusions that AMA did not meet these responsibilities or even make meaningful progress toward that end.

One column in AMA's Shelter Progress Report outlines "events" that allegedly occurred during the first year of the grant; another column provides for identifying any "evidence" documenting the event. The first entry in the table reveals that when AMA received the grant, AMA had not even made a firm decision about where to locate the shelter, despite the representation in its grant application that the shelter would be located at 2418 Plymouth Avenue. In addition, while the table indicates that AMA was engaged in "scouting" for a shelter

site between October 2007 and May 2008, the report cites no evidence corroborating that scouting effort and, in general, no evidence that AMA diligently identified, weighed, and assessed alternatives for the shelter site prior to the May 2008 site visit. Overall, the "events" cited in the table show no significant planning or development activity during the first eight months of the grant, and the only "evidence" cited for any of the "events" listed for that period is an April 4, 2008 renovation contract with "Fix My House (Mike Carroll)," whereas the contract is actually for a contractor named Anne Craig.

Furthermore, the same entry indicates that AMA had been unable to obtain a construction permit for the Plymouth Avenue site. The report also indicates that the project director for the shelter resigned in April 2008 "due to the complexity of the Shelter Project." The report also supports the reviewers' conclusions that AMA still had made no significant progress by the time of the August on-site visit and still had no firm plans to develop the shelter. A July 7, 2008 entry indicates that a rental site prospect identified in June was not available due to a zoning issue. An August 2008 entry states that AMA resubmitted a remodeling permit application that month; however, the report (and evidence cited in Appendix 5) further indicates that AMA did not obtain a permit to renovate the planned shelter site until January 2009, well after the first year of its grant had ended. In view of the evidence concerning the May and August 2008 site visits - evidence that AMA does not challenge and is corroborated by the documents submitted to us by AMA - we find that AMA did not comply with its obligation under the grant to plan and develop its shelter during the grant's first year.

As a consequence of its planning and development failure, AMA did not begin operating its planned runaway and homeless youth shelter during September 2008, as called for in the Work Plan. Moreover, there is no evidence that AMA provided - directly or indirectly - shelter to runaway or homeless youth at any time prior to August 12, 2009, the date that ACF terminated its grant. Because providing shelter to runaway and homeless youth was one of the primary objectives of AMA's TLP grant, and because providing shelter to homeless youth is a statutory requirement of every TLP grantee, AMA's failure to begin operating its runaway and homeless youth shelter by September 2008 is clearly a material failure to comply with the terms and conditions of its grant and thus a legally sufficient basis to terminate the grant under 45 C.F.R. § 74.62(a)(3). The fact of AMA's continuing failure to open the shelter after September 2008 compounds that material noncompliance.

Progress reports authored by AMA and other evidence indicate that the building at 2418 Plymouth Avenue was finally renovated during the spring and summer of 2009, more than 18 months after AMA received the TLP grant. See AMA Appeal File. AMA suggests that it needs only additional federal funding to begin operating the shelter at that site. ACF responds that AMA needs more than additional funding. ACF asserts that AMA needs a Transitional Services Certification (TSC) from the Minnesota Department of Human Services (DHS) in order to operate its shelter. See ACF Ex. 5, at 2; ACF Ex. 8, at 39-41 (indicating that other TLP grantees in the Minneapolis area operate with a TSC); Minn. Stat. § 245A.03, subd. 1; Minn. R. §§ 2960.0030, 2960.0500. AMA does not dispute that it needs a TSC (or some other type of residential license from DHS) to begin sheltering runaway and homeless youth at 2418 Plymouth Avenue, nor does AMA claim that it obtained such a license prior to the termination decision.⁸

AMA contends that ACF should have given it more time to meet its legal obligation to provide shelter to its target population, asserting that TLP programs "take time to develop" because the influence of "local neighborhood groups." However, ACF was under no legal obligation to give AMA more time in these circumstances. If a federal agency properly determines that a grantee has materially failed to comply with the grant's terms and conditions, the federal agency may terminate the grant immediately, without giving the grantee an opportunity to take corrective action. 45 C.F.R. § 74.62(a)(3); Renaissance III, DAB No. 2034, at 11 (2003).

AMA also blames its failure to open the shelter on time on an inability to obtain necessary licenses, permits, and zoning changes. In Tuscarora Tribe of North Carolina, DAB No. 1835 (2002), the Board rejected a RHYA grantee's suggestion, similar to AMA's, that the (valid) actions (or inaction) of the local licensing authority contributed to its material failure to comply with grant requirements and somehow excused that failure. DAB No. 1835, at 7, 12 & n.4. The Board held that this did not excuse the grantee's noncompliance, and that the grantee was responsible for determining - prior to submitting its grant application - that the objectives of its federally financed

⁸ The HHS GPS, whose provisions are terms and conditions of AMA's TLP grant, states that grantees "are expected to be in compliance with applicable State and local laws and ordinances." ACF Ex. 16, at 4.

project were achievable. Id. at 12. For example, said the Board, the grantee -

could have coordinated with the appropriate state and local officials and with other appropriate organizations as necessary to determine the need and prerequisites in its area for providing temporary shelter for qualified runaway and homeless youth. Thus, even if local procedures were the only cause of [the grantee's] failure to comply with the special condition . . . this is not a basis for reversing the disallowance.

Id. Similarly, AMA was responsible for ensuring that the timetable in its grant application for developing and opening its shelter was realistic and that it was feasible to obtain the necessary state operating license, building permit, and city zoning changes soon enough to meet that timetable.⁹ We see no evidence that, prior to submitting its grant application, AMA performed the necessary research and coordination with state and local authorities to verify that its timetables were feasible. Also, there is no evidence that, even as of May 2008, eight months after ACF awarded the grant, AMA had an understanding of the licensing, permit, and zoning requirements sufficient to enable it to meet the timetable in its Work Plan. No matter what efforts AMA took after the May 2008 onsite visit to obtain the required legal authorizations, ultimate responsibility for not achieving the grant's objectives within the required time frames rests squarely with AMA.

2. *AMA materially failed to comply with the terms and conditions of its TLP grant because it did not provide services to runaway and homeless youth.*

AMA materially failed to comply with grant terms and conditions not only because it failed to begin operating its planned shelter, but because it failed to provide runaway and homeless youth with counseling and other non-shelter services to promote independence and prevent future dependence on social services.

⁹ AMA's grant application stated that it would "comply with all applicable codes, ordinances and licensing regulations of the state and/or local jurisdiction in Minneapolis, MN." ACF Ex. 2, at 45.

The RHYA required AMA to provide such services to "homeless youth" as a condition of receiving TLP funding. 42 U.S.C. § 5714-2(a). Consistent with that statutory requirement, the grant application's Work Plan called on Ramen Ya (AMA's proposed TLP) to begin providing counseling and other supportive services to homeless Asian-American and Pacific Islander girls between the ages of 16 and 18 by September 2008. ACF Ex. 2, at 36. The Work Plan also required Ramen Ya to provide those services to "runaway" girls in those ethnic and age groups. Id.

For purposes of the Transitional Living Grant Program, the RHYA defines a "homeless youth" as a person: (a) who is 16 to 21 years old;¹⁰ (b) for whom it is not possible to live in a safe environment with a relative; and (c) who has no other safe alternative living arrangement.¹¹ 42 U.S.C. § 5732a(3). The regulations implementing the RHYA define the term "runaway youth" to mean "a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of his or her family."¹² 45 C.F.R. § 1351.1(k).

¹⁰ For purposes of the Basic Living Grant Program, a separate RHYA program, the maximum age is 18, not 22 years. 42 U.S.C. § 5732a(3) (citing 42 U.S.C. ch. 72, subch. III, pt. A).

¹¹ The regulations that implement the RHYA define "homeless youth" to mean "a person under 18 years of age who is in need of services and without a place of shelter where he or she receives supervision and care." 45 C.F.R. § 1351.1(f). This regulatory definition was promulgated in 1978. 43 Fed. Reg. 55,634, 55,635 (Nov. 28, 1978). However, in 1999, Congress amended the RHYA to add a statutory definition of homeless youth that is somewhat different than the regulatory definition. See Pub. L. No. 106-71, tit. I, § 3(p), 113 Stat. 1041-42 (establishing a minimum age of 16 for a homeless youth). The grant here was issued in 2007 under a grant announcement that accurately paraphrases the statutory definition of homeless youth, so that statutory definition is controlling in this case.

¹² Congress amended the RHYA in 2008 to add a definition of "runaway youth" that is, for purposes of this case, substantially the same as the regulatory definition in 45 C.F.R. § 1351.1(k). Pub. L. No. 110-378, 122 Stat. 4068 (2008). The RHYA now defines that term to mean "a person under 18 years of age who absents himself or herself from a home or a place of legal residence without the permission of a parent or legal guardian." 42 U.S.C. § 5732a(4).

The AMA knew or should have been aware of these definitions because they are contained in the grant announcement under which it applied for federal funding, and because it received technical assistance from RHYTTAC in mid-2008 that explained the criteria for identifying such youth. ACF Ex. 1, at 3-4; ACF Ex. 4, at 10, 16, and 21; ACF Ex. 5, at 3.

During their two onsite visits, ACF's reviewers (Evans and Lee) found no credible evidence that AMA had provided, or was providing, non-shelter services to runaway or homeless youth. See ACF Ex. 4, at 7, 9, 10; ACF Ex. 14 ¶ 14. In response to that finding, AMA has submitted mental health case summaries of six girls who participated in its "What About Us" support group. Although the case summaries portray girls with unstable home lives, they do not indicate that the girls were "homeless," as that term is defined in the RHYA. According to the case summaries, three of the six girls were younger than the statutory minimum age (16 years) when they received the mental health services, and all of the girls, it appears, lived at home with parents or other relatives. There is, moreover, no evidence that any of the girls lived in an "unsafe" environment. In short, we find that AMA did not meet its obligation to begin providing homeless youth with counseling and other supportive services by September 2008. In fact, we find no evidence that Ramen Ya has ever provided homeless youth with such services.

Similarly, we find that AMA did not, at any time between September 2007 and the date of termination, provide counseling and other supportive services to its target population of "runaway" girls. As noted, a runaway youth is a person who "absents himself or herself from home or place of legal residence without the permission of his or her family." 45 C.F.R. § 1351(k)(1). The mental health summaries submitted by AMA do not indicate that any of the girls in the What About Us support group met that criterion. AMA has submitted internal "status reports" which imply that AMA was providing services to its target population but the information in those reports is unspecific and essentially unverifiable.¹³

¹³ In some of its submissions to the Board, AMA stated that Ramen Ya's "target population" were Asian-American and Pacific Islander youth "at risk of separation from the family." That assertion is inconsistent with AMA's grant application, which identifies the target population as "runaway and homeless" girls. ACF Ex. 2, at 18.

Even if we found that one or two (or even five) of the girls in the What About Us support group met the statutory definitions of runaway or homeless youth, we would still find that AMA materially failed to comply with grant terms and conditions because its grant application envisioned a TLP program serving a substantially greater number of such youth (245 per year, to be exact). See Tuscarora, DAB No. 1835, at 11 ("One youth in comparison to the number identified by [grantee's] own objectives in its grant application is far too insignificant to be considered "material compliance").

In sum, the record shows that as of September 2008, AMA materially failed to comply with the terms and conditions of its grant because it had not developed and opened its runaway and homeless youth shelter and had not begun to provide counseling and other supportive services to its target population despite receiving substantial technical assistance.¹⁴ Even as of the date of termination, almost one year later (August 2009), AMA had still not achieved those objectives. Furthermore, ACF's reviewers made a number of findings critical of AMA's staffing, governance, and planning - findings that AMA has not challenged in this appeal and which support the reviewers' conclusion that AMA, no matter what its intentions, lacked the organizational capacity to achieve the grant's objectives.

AMA suggests that ACF should continue funding its TLP because it provides, or will provide, beneficial services to youth who are in great need of its services. However, a grantee must do more than provide, or intend to provide, services beneficial to the community. It must show that it is using the money to achieve the specific purposes for which it received federal funding. Renaissance III at 12 (stating that a grantee "must do more than show that its work is beneficial and supported by the community"). ACF was under no obligation to continue funding an

¹⁴ The Work Plan in AMA's grant application actually indicates that Ramen Ya would begin providing certain non-shelter services to the target population immediately - that is, in September 2007. See, e.g., ACF Ex. 2, at 36 (stating that Ramen Ya would begin offering a "weekly support group" to runaway and homeless youth, sexual violence victims, and "other at risk youth"). However, since the decision to terminate the grant appears not to have been based on a failure to provide services scheduled to begin immediately, we do not address whether such a failure constitutes a material failure to comply with the terms and conditions of AMA's grant.

organization that demonstrated an inability to manage and fulfill its grant obligations.

AMA also contends that ACF reviewer Niki Lee "failed to clearly state or itemize in writing her issues regarding" Ramen Ya and "never presented AMA with written reports of her visits." AMA asserts further asserts that -

on several occasions [it] requested that Mrs. Lee put all her concerns in writing so that we could attend to and resolve any all issues accordingly. However, Mrs. Lee has failed to provide such materials, which are necessary to improve the program and make the appropriate changes.

AMA provided no evidence to support this assertion, such as pre-termination correspondence or other communications indicating that it had asked ACF for a written statement of its concerns. The record does not indicate that ACF sent its written reports of the May and August 2008 onsite visits to AMA, and ACF does not aver that they were sent. However, as we stated in Tuscarora, "there is no requirement in [the regulations] that the awarding agency make reports available to the grantee; instead, [the regulations] require the grantee to submit program performance and financial reports to the agency." DAB No. 1835, at 13; see also 45 C.F.R. § 74.50 et seq.

In any event, AMA does not allege that it lacked actual notice or an adequate understanding of ACF's concerns, or their seriousness, following the two onsite visits. Indeed, the record supports the opposite conclusion. As discussed, ACF's overriding concern was that one year after receiving its grant, AMA had not yet begun to provide shelter and other services to its target population and appeared to be organizationally incapable of achieving those objectives. Email messages among AMA employees, ACF, and RHYTTAC (ACF Ex. 8) reveal that AMA understood that it needed to get its TLP up and running quickly and that it had received "feedback" from ACF about its compliance status. See, e.g., ACF Ex. 8, at 1 (May 22, 2008 emails from AMA case manager TamaLin Fox to TC Cassidy of RHYTTAC stating that AMA had met with Niki Lee, that "[w]e have a lot of work to do to get in compliance," and the "feedback we got is that we are a mess"). Moreover, it is reasonable to suppose that AMA was fully aware of ACF's compliance concerns prior to termination because it sought and received extensive technical assistance to address them. See ACF Exs. 5 and 8. In addition, AMA's own appeal file contains a December 2, 2008 "Correction Action Plan" for Ramen Ya, which identifies a number

of deficiencies requiring corrective action. That document strongly supports a finding that AMA was aware of many of ACF's specific concerns and the need to correct deficiencies.

We further note ACF included its written reports of the onsite visits in its appeal file, and AMA had an opportunity to review and respond to them in this proceeding. Despite that opportunity, AMA did not address any of the reports' statements or findings, much less dispute them.¹⁵

Finally, AMA complains that Niki Lee did not understand Ramen Ya or the needs of the community that it was trying to serve. However, we see no evidence that Lee or ACF misunderstood the elements of Ramen Ya. As described in AMA's grant application, Ramen Ya's primary goal was to provide shelter and other supportive services to homeless and runaway Asian-American and Pacific Islander girls. As discussed, the record is devoid of evidence that AMA provided shelter and other services to that population.

¹⁵ In its September 29, 2009 letter acknowledging receipt of AMA's appeal, the Board informed AMA that it could file a "reply" to ACF's brief and appeal file within 15 days after receiving those materials (which were filed on December 4, 2009). On December 17, 2009, the Board asked AMA in an email if it intended to file a reply and reminded AMA of the applicable 15-day filing deadline. That same day, AMA responded to the Board's inquiry but did not state that it would be filing a reply brief, only that it would "call and check in to get a full understanding [of] the process and deadline." Dec. 17, 2009 email from Ange Hwang (AMA) to Ken Veilleux (DAB). The Board received no further communication from AMA, and AMA did not file a reply to ACF's submissions.

Conclusion

For the foregoing reasons, we conclude that AMA materially failed to comply with the terms and conditions of its TLP grant. Accordingly, we sustain ACF's determination to terminate that grant.

_____/s/_____
Leslie A. Sussan

_____/s/_____
Constance B. Tobias

_____/s/_____
Sheila Ann Hegy
Presiding Board Member