

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Kansas Department of Administration
Docket No. A-16-116
Decision No. 2845
January 26, 2018

DECISION

The Kansas Department of Administration (KDOA) timely appealed the June 15, 2016 determination of the Department of Health and Human Services (HHS) Cost Allocation Services (CAS) disallowing \$10,602,278 in the federal share of funds collected by KDOA as fees for debt collection services performed for the Kansas Department of Children and Family Services (KDCFS) during fiscal years (FYs) 2003 through 2010 and assessing \$1,306,324 in imputed interest on the disallowed amount through July 15, 2016. KDOA operated a setoff program in which it retained a percentage of debt recovered (including child support obligations) as a collection assistance fee but failed to include the resulting revenues in its statewide cost allocation plan (SWCAP). Because states are only allowed to charge the federal government for costs of central services provided to state agencies to the extent provided in their SWCAPs, CAS disallowed the net revenues KDOA received from collection assistance fees related to the federal share of debts collected.

KDOA disputed that the setoff program should have been included in its SWCAP. KDOA Br. at 2-3. KDOA also argued that the disallowance is time-barred, based on record retention requirements, in the absence of an “audit or other review.” *Id.* at 3-4. Moreover, KDOA argued that it should at least be allowed to claim federal funds for the actual costs of its collection activities. *Id.* at 5-6. Finally, KDOA put forward a variety of equitable reasons to justify its retaining the federal funds. *Id.* at 6-9.

For reasons we explain below, we conclude that the setoff program should have been included within the SWCAP. Under applicable regulations, costs of programs that should have been but were not included in the SWCAP will not be reimbursed. Therefore, we uphold the disallowance.¹

Background

CAS reports that its concern arose as a result of reviewing Kansas' FY 2009 and 2010 SWCAPs, which were based on actual data from FYs 2007 and 2008, respectively. CAS Br. at 4; CAS Ex. 2, at 3-4 (Declaration of Terry Hill). During the review, the SWCAP figures were compared to Kansas' Comprehensive Annual Financial Reports for the relevant years. *Id.* Mr. Hill avers that the comparison disclosed that the Annual Financial Reports showed that the "Accounting Services' Internal Service Fund (ISF) had revenue titled 'Charges for Services' of \$7,611,000 for FYE 6/30/2009 and \$11,159,000 for FYE 6/30/2010," none of which was reported in the applicable SWCAPs. CAS Ex. 2, at 4, citing CAS Ex. 1, at 9 and 10. Mr. Hill then corresponded with State officials and determined that the revenue arose from setoff fees for assistance in collection of amounts due to State agencies. CAS Ex. 2, at 4-5. Further State correspondence with CAS disclosed that more than 40% of the revenue from those fees was derived from KDCFS, a heavily federally-funded agency. CAS Br. at 4-5, citing CAS Ex. 1, at 17. The FY 2013 SWCAP, for the first time, included the Accounting Services ISF, and specified that among the billing methods it used was the application of a "fee . . . to the amount of the debt setoff amount recovered." CAS Ex. 2, at 5, quoting CAS Ex. 1, at 29.

Representatives of the HHS Administration for Children and Families (ACF) contacted CAS in 2012 to express concern that KDOA was charging 17% of collections for KDCFS activities supported heavily by federal funds under the child support enforcement program authorized by title IV-D of the Social Security Act. CAS Ex. 2, at 6-7, citing correspondence at CAS Ex. 1, at 34-42. ACF's initial concern was that the flat percentage rate seemed unreasonably high and did not appear to vary to reflect actual costs. ACF undertook an audit to determine whether title IV-D funds were spent on collection fees that were unallowable as unreasonable. The final audit report (No. KS-12-LC) found that KDCFS had been charged \$4,838,260 during FYs 2011 and 2012 by

¹ We note, however, that neither CAS's determination nor our decision precludes CAS from considering, in its discretion, any information which KDOA may provide to CAS to establish the amount of otherwise allowable actual costs of collection efforts during the relevant period as potential offsets of the amount disallowed. As we explain further below, the parties are free to engage in discussions about any allowable costs that might be identified as eligible for claiming, but no further rights of appeal to the Board will arise from any agreement that may result.

KDOA for what were called “Offset Reimbursement Fees” but that the actual, allowable costs of the collection services were only \$1,397,013, resulting in unallowable charges in excess of cost to the title IV-D program of \$3,447,177 with a federal share of \$2,271,177. CAS Ex. 1, at 51-55. The State response did not dispute the findings, indicating that Kansas would refund the unallowable federal claims and would make adjustments to ensure that only cost-based claims were included in the future. *Id.* at 56. (KDOA pointed out on appeal, however, that the audit disallowed the collection assistance fees for FYs 2011 and 2012 only to the extent they exceeded the actual costs of collection activities, contending it was arbitrary for CAS to disallow the full fee recovery amounts for the earlier years. KDOA Br. at 5.)

The auditors indicated that they did not review any amounts paid by KDCFS to KDOA for collection of child support for years prior to FY 2011 because, before that time, no separate offset unit was established and “no records [were] maintained to identify the costs associated with the offset program.” CAS Ex. 1, at 53. CAS then communicated with KDOA and explained that, while the issue was settled for FYs 2011 and 2012 with the resolution of the ACF audit, revenue from the setoff program clearly exceeded costs significantly in prior years and should have been (but was not) included in the applicable SWCAPs submitted to CAS. *Id.* at 61-62; *see also* KDOA Ex. B at 1 (CAS Determination Letter). CAS sought information about the total revenue KDOA derived from the setoff program broken down by customer agency for as far back as the data were available. CAS Ex. 1, at 62.

KDOA responded to CAS’s inquiries. Among other points, KDOA asserted that the ongoing “split” whereby KDOA retained 17% of all recoveries (forwarding the net proceeds to the client agencies) was based on a 1994 calculation of the costs of the setoff program divided by estimated recoveries. *Id.* at 71. KDOA also stated that, “[i]n the original design,” KDOA did not expect the client agencies to “try to recover federal funds for the proceeds deposited as the [KDOA] share,” but became aware in 2012 that KDCFS was doing so. *Id.* at 71-72. As a result, KDOA obtained a cost study to submit to ACF to determine allowable costs, but still insisted that the fees did not constitute “revenue” for a central service of the State. *Id.* at 72. Nevertheless, as requested, KDOA provided CAS with breakdowns of the setoff program split by client agency for FYs 2005 to 2012, as well as the 2012 cost study. *Id.* at 73-151. CAS also reviewed a state worksheet entitled “Setoff Program, Gross Collections, Net to Agency, Retained by Setoff by Agency” for FYs 2003 -2013. *Id.* at 150-151.

After further correspondence, this disallowance ensued. *Id.* at 152-164; CAS Ex. 2, at 9-12, 16-17. CAS explains that it calculated the federal share of the total that KDOA retained by setoff fees from the KDCFS using the FFP amounts for KDCFS provided by Kansas and added imputed interest to arrive at the total disallowance.² CAS Br. at 9. CAS further explains that it did not reduce the disallowance to reflect actual costs of the collection program because the program was not included in the SWCAP at all during the years in question. *Id.*

Applicable legal authorities

Central service costs are the costs of services provided by a state on a centralized basis to its various departments and agencies, which in turn may receive federal funding in those costs to the extent they administer federally-funded programs. 2 C.F.R. Pt. 200, App. V. To ensure that central service costs are identified and assigned to benefitting federal programs and activities on a reasonable and consistent basis, OMB Circular A-87, now consolidated with other circulars and codified at 2 C.F.R. Part 200,³ establishes a process for submission and approval of a central service SWCAP. 2 C.F.R. §§ 200.27, 200.416; 2 C.F.R. Pt. 200, App. V ¶ A. As relevant here, each year states must submit their SWCAPs for review and approval by HHS, the federal cognizant agency for state grantees. 2 C.F.R. Pt. 200, App. V ¶¶ A.1, B.4, D.1, F. Within HHS, CAS is responsible for reviewing SWCAPs, as well as negotiating any indirect cost rate agreements with the states.

Central service costs included in a SWCAP may either be allocated (historically referred to as Section I costs) or billed (Section II costs). *Id.* ¶¶ B.2, B.3, C. Allocated costs are those that benefit various agencies but are not billed out to them directly (as fee-for-service charges, for example), and instead are allocated according to a reasonable methodology (set out in the SWCAP). *Id.* ¶ B.2. Regardless of whether they are allocated or billed, central service costs must be included in a SWCAP if they will be claimed under any federal awards.⁴ *Id.* ¶ C. The regulations are clear that costs of any “central services omitted from the [SWCAP] will not be reimbursed.” *Id.*

² KDOA disputes the basis for the disallowance, as we explain below, and objects to CAS not allowing for the actual costs of collection, but does not dispute the calculations used by CAS.

³ The consolidation and re-codification occurred in December 2013, but the substance of the provisions relevant here did not change during the periods at issue. We therefore cite to the current version throughout for ease of reference.

⁴ The nature of the information to be submitted differs for Section I and II costs, however. Each year, the state must project the allocated costs for the coming year and reconcile the actual allocated costs to the estimated costs used for the most recently completed year or the year immediately preceding the most recently completed year. 2 C.F.R. Pt. 200, App. V ¶ D.1. Specific accounting information is required for billed central services costs, including ISFs, self-insurance funds, and fringe benefit funds. *Id.* ¶ E.3.

Where a SWCAP has been negotiated and approved, but is later found to have included costs that are unallowable, the cognizant agency may require a refund of federal funds. *Id.* ¶ F.4. Such adjustments or refunds “are designed to correct the plans and do not constitute a reopening of the negotiations.” *Id.*

Overarching cost principles limit federal reimbursement for the costs of implementing federal programs to the sum of the allowable direct and allocable indirect costs less any applicable credits. 2 C.F.R. § 200.402. To be allowable, all costs must be necessary and reasonable for proper and efficient performance and administration of a federal award, conform to any limitations or exclusions set forth in the cost principles or in the award as to types or amounts of costs, and be properly allocable to the award. *Id.* §§ 200.400, 200.403, 200.404. A cost is allocable to a particular cost objective (such as a federal grant) only to the extent that the expenditure benefits that objective. *Id.* § 200.405. Allocability has historically been a basic component of allowability for all costs charged to federal grants. *See Me. Dep’t of Human Servs.*, DAB No. 712, at 13 (1985) (noting that allocability is a “long-standing principle well-articulated in regulations”). State costs that benefit more than one program must generally be allocated to each program in proportion to the benefits that each derives from the activity that generated the costs. *W. Va. Dep’t of Health & Human Res.*, DAB No. 2529, at 2 (2013); *Minn. Dep’t of Human Servs.*, DAB No. 1869, at 4-5 (2003).

The Board has long held that the grantee bears the burden of demonstrating the allowability and allocability of all costs charged to federal grant programs, including providing adequate supporting documentation. *See, e.g., Pa. Dep’t of Human Servs.*, DAB No. 2835, at 5 (2017); *N.Y. State Dep’t of Social Servs.*, DAB No. 433, at 9 (1983) (“the State carries the burden of proof with respect to documentation of its claims”). All costs claimed by a state under federal grant awards must “[b]e adequately documented.” 2 C.F.R. § 200.403(g); *see also N.J. Dep’t of Health*, DAB No. 2497, at 4 (2013). Thus, the state must maintain “[r]ecords that identify adequately the source and application of funds for federally-funded activities,” and that “contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.” 2 C.F.R. § 200.302(b)(3).

Analysis

KDOA offers the following four arguments to justify its appeal:

1. Setoff collection assistance program was properly excluded from the [SWCAP] because debt setoff is not a billed or allocated central service appropriate for inclusion in the SWCAP under OMB Circular A-87 and its attachments.

2. The determination ignores records retention requirements, is untimely, and is barred by 28 U.S.C.A § 2415.
3. The determination is arbitrary in that allowable costs were incurred and should not be required to be repaid by [KDOA].
4. [KDOA] asserts the additional affirmative defenses of Unclean Hands, Stale Claim, Laches, Waiver and Estoppel.

KDOA Br. at 1-2. We address and reject each argument in turn below.

1. The debt collection program generated revenue to the central services funds, which had to be included in the SWCAP.

KDOA first suggests that the debt collection program did not belong in the SWCAP at all because not all state agencies were required to participate in its setoff fee-based system. According to KDOA, “The debt setoff program is not a central service because only certain state agencies that are owed debt participate, along with municipalities that participate on a voluntary basis if they so choose, and states surrounding Kansas, which participate to varying degrees.” KDOA Br. at 2. KDOA does not identify any authority limiting the central services that must be included/identified in a SWCAP to those programs in which all state agencies participate or in which only state agencies are permitted to participate. The full text of the definitions of allocated and billed central services are set out here and contain no reference to such limitations:

Allocated central services means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

Billed central services means central services that are billed to benefitted agencies or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

2 C.F.R. Pt. 200, App. V ¶¶ B.2, B.3. The examples provided of typical kinds of central services are plainly illustrative and not exhaustive of all the possible kinds of services that a state might choose to provide on a centralized basis for the benefit of its various operating agencies. The only limitation implicit in these definitions as to the operating agencies is that costs may be allocated or billed only to the benefitting agencies or programs.

Moreover, KDOA's claim before us that its debt collection services do not belong in its SWCAP is inconsistent with Kansas's response to the ACF audit. Kansas acknowledged that KDCFS had been claiming federal funds for KDOA's setoff fees for debt collection and accepted the audit recommendations to limit claims to actual costs and develop an appropriate allocation methodology for claiming the share benefitting KDCFS's federal programs. CAS Ex. 1, at 58-59. Kansas thus did not dispute that KDCFS was benefitting from the central debt collection services of KDOA and did not deny that the amounts retained by KDOA exceeded actual costs of the collection activities. These concessions effectively establish that KDCFS's federal programs were bearing more than their fair or reasonable share of the costs of operating KDOA's debt collection services. Preventing such outcomes is precisely the point of requiring that all central services that are to be billed or allocated to operating agencies that administer federally funded programs be disclosed in the SWCAP.

KDOA also suggests that its debt collection activities cannot be included as central service costs because KDCFS hires staff who engage in child support enforcement activities. KDOA Br. at 3. KDOA bases this theory on the rule that "a cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost." *Id.*, citing OMB Circular A-87, Attachment E, Section A.1 regarding state and local indirect cost rate proposals (now codified at 2 C.F.R. Pt. 200, App. VII ¶ A.1). As CAS points out, this provision is not relevant here, since no indirect cost rate is at issue. CAS Br. at 15-16. Furthermore, while consistency in cost treatment is also required under the general cost principles, we see no violation of that requirement here. *See* 2 C.F.R. § 200.412. The reason that a cost item may not be treated as direct for one purpose and indirect for another is to prevent double-charging federal grants for the same kinds of costs. *Id.* CAS does not deny that KDOA is permitted to bill or allocate actual costs of debt collection activities to benefitting agencies, including KDCFS, even if those agencies also undertake other collection or enforcement activities. *See, e.g.*, CAS Br. at 16. What CAS does not permit, and we agree that it is within its authority not to do so, is for KDOA to retain a share of the collections without disclosing that in its SWCAP and without reconciling that share to any actual costs of KDOA's collection activities benefitting federal programs.

We reject KDOA's attempt to reframe the debt setoff fees as merely "revenue sharing" by its creditor agencies that it was not required to include in the SWCAP. *Cf.* KDOA Br. at 2. First, KDOA does not explain why characterizing the setoff fees deducted from funds recovered for other agencies as "revenue sharing" would justify passing the recovery program costs on to federal programs without offsetting the retained income. Second, the Kansas statute to which KDOA cites to support its argument does not refer to revenue sharing. The statute instructs KDOA, "[f]rom the gross proceeds collected . . .

through setoff,” to “retain a reasonable collection assistance fee in an amount based on cost, as determined by generally accepted cost allocation techniques” K.S.A. 75-6210 (as amended by Kansas Session Laws 2001, ch.5, § 407), as applicable 2003-2010 set out in KDOA Ex. E. “The amount of the collection assistance fee retained” is remitted to the State treasury “to the *credit of the* accounting services recovery fund.” *Id.* (italics in amendment). Once the operating agency receives the net proceeds after deduction of the collection fee, it is instructed to credit the debtor’s account with the gross amount collected. *Id.* In short, the statute treats the setoff program as “fee” based and as intended to create an accounting services recovery fund reflecting the costs of recovery activities. Most importantly, CAS correctly points out, the funds recovered for KDCFS are in no sense “revenues” earned by KDOA. As CAS states, “the collections were child support payments collected from noncustodial parents that must, in turn, be paid to the custodial parent by [KDCFS].” CAS Br. at 15. Hence, as CAS puts it, “[b]ecause [KDOA] collected ‘collection assistance fees’ from the gross collections, [KDCFS] had to ‘make up’ the difference by charging the collection assistance fees reduction” to the title IV-D program “as administrative costs.” *Id.*

The impact of the reduced recovery on federally-funded programs like child support explains why KDOA’s asserted “original design,” in which it did not expect client agencies to “try to recover federal funds for the proceeds deposited as the [KDOA] share,” did not in practice preclude the setoff fees from resulting in improper charges against federally-funded programs. CAS Ex. 1, at 71-72. It was impermissible for KDOA to assess fees from agencies administering programs with federal funding without ensuring through the SWCAP process that the methodology was reasonable and consistent in its impact on federal programs. The remaining issue is whether CAS was authorized to require return of funds received as a result of the undisclosed setoff fees.

2. Record retention requirements do not bar the disallowance, and 28 U.S.C. § 2415 has no relevance in this proceeding.

KDOA argues that CAS lacks authority to require repayment for FYs 2003-10 because the SWCAPs for those years were approved by CAS and the ACF audit did not seek to disallow funds prior to FY 2011. KDOA Br. at 3. KDOA purports to be “puzzled as to the delay in this determination demanding payment with no prior negotiation for the years now at issue” and contends that it is inappropriate to “retroactively disapprove fee costs for such remote time periods related to previously approved plans . . . because relevant records are not available to prove or disprove the arbitrary and unreasonable assumption in the determination.” *Id.* at 3-4. KDOA cites to 45 C.F.R. § 92.42 (presumably meaning as it was in effect through 2010), which generally required retention of all records relevant to HHS grants for at least three years from the date of the final expenditure report or, if “any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period,” then until such issues are resolved. 45 C.F.R. § 92.42(b)(2). KDOA acknowledges another

provision of the regulations, which, as then in effect, pointed out that the “closeout of a grant does not affect: (a) The Federal agency’s right to disallow costs and recover funds on the basis of a later audit or other review; [or] (b) The grantee’s obligation to return any funds due as a result of later refunds, corrections, or other transactions” KDOA Br. at 4, citing 45 C.F.R. § 92.51 (entitled “Later disallowances and adjustments”). KDOA complains, however, that no audit or other review of the costs at issue ever took place, but that instead the “final determination appears to have been issued with no communication on the subject” *Id.*

KDOA’s arguments misapprehend CAS’s action here and do not fairly represent the course of dealing between the parties. As cited in the background section, various communications took place between the State and CAS about the debt collection program and the handling of setoff fees both before and after the ACF audit. Nothing in the regulations, furthermore, requires CAS to conduct a formal audit, as opposed to reviewing the earlier years’ SWCAPs and requesting information from state officials by letter about the setoff fee revenues and client agencies. The grantee remains obligated to return funds based on the corrections necessitated by the revelation that its SWCAPs failed to disclose that state agencies receiving federal funds had been paying fees for collection of child support, as well as other debts. CAS can hardly be barred from seeking refunds of such fees based on its acceptance of the SWCAPs for the years at issue given that the State, which was responsible for providing accurate information and which was operating the debt collection program, did not disclose the fees. As we have said, the regulations clearly provide that states are not entitled to reimbursement for costs omitted from the SWCAP. 2 C.F.R. Pt. 200, App. V ¶ C.

Although, as addressed in the next section, CAS argues in the alternative that at least the portion of the fees that exceeded actual costs should be disallowed, the primary basis on which CAS seeks return of the funds at issue is precisely the omission of the setoff fee program from all the relevant Kansas SWCAPs. KDOA has not disputed that the program was omitted, nor has KDOA disagreed with the calculation of the amounts at issue for the relevant years (and those amounts were derived from the information provided by State officials).

The record retention requirements, as KDOA appears to realize, do not place a statute of limitations on federal agencies’ authority to recover misused funds. At most, the expiration of the record retention period prior to initiation of a review may constitute a defense or explanation for a state agency’s inability to provide adequate documentation for challenged costs. The omission of the entire program from the SWCAPs is not a failure to submit adequate documentation but, rather, a failure to disclose. Therefore, the record retention periods are irrelevant to the primary basis for the CAS determination.

The statute on which KDOA also seeks to rely provides that tort actions brought by the United States for diversion of grant funds or conversion of federal property must be brought within six years of accrual of the right of action. KDOA Br. at 4, citing 28 U.S.C. § 2415(b). The general statute of limitations provision cited has no relevance to the present matter, which does not sound in tort. Courts have held that recoupment of grant funds under other statutes are not subject to this general statutory limitation. *See, e.g., United States v. Lutheran Med. Ctr.*, 680 F.2d 1211, at 1214 (8th Cir. 1982), *aff'g* 524 F. Supp. 421 (D. Neb. 1981), *citing United States v. City of Palm Beach Gardens*, 635 F.2d 337, *cert. denied*, 102 S. Ct. 635 (1981).

In short, we conclude that nothing cited by KDOA precludes CAS's recovery of the federal share of setoff fees omitted from the SWCAPs at issue.

3. KDOA was responsible for documenting any allowable costs of its debt collection activities and has not done so for the periods at issue here.

In its briefing, CAS states that, although its position is “that the entire debt should be refunded to the federal government because it was not included in a valid and approved SWCAP,” in the alternative at least “the amount exceeding actual costs of the Setoff Program should be refunded.” CAS Br. at 12. Such a finding would require KDOA to identify those costs underlying the amounts retained as setoff or collection assistance fees which could qualify as allowable under the cost principles. 2 C.F.R. § 200.404.

KDOA correctly notes that the ACF audit resulted in disallowance only of those amounts that exceeded KDOA's documented actual costs found by the auditors. KDOA Br. at 4-6. KDOA argues that allowable costs were also incurred in other years and that failing to credit them was arbitrary and capricious. *Id.* KDOA argues that CAS instead “should determine, or allow the State of Kansas to establish, the allowable cost for offset services for FY 2003-2010 and adjust any disallowed amount downward accordingly.” *Id.* at 5. KDOA then points out that its state records retention requirements provided that debt setoff records be kept for seven fiscal years.

As CAS states, the cost principles provide that “[t]he cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a prorate[d] share of indirect costs.” CAS Br. at 13, quoting 2 C.F.R. Part 225, App. A ¶ G. A flat fee based on a percentage of recoveries bears no necessary relationship to the costs of the recovery activities. Therefore, KDOA (or the State of Kansas) would have to document what actual costs were incurred. Yet, despite ample opportunity to offer documents during this proceeding, as well as during the prior communications, KDOA proffered nothing, not even from the time periods during which its own record retention policy should have ensured that any documentation would still

have been available. Instead, KDOA appears to suggest that the federal government should undertake to discover through a further audit or review what documentation the State might have. But as we have said, longstanding precedent makes clear that documenting the basis for claims of federal funds is always the burden of the grantee.

For that reason, KDOA's assertion that "CAS has failed to establish that the amount of the fees were in excess of the actual cost of providing the service for the years at issue" (KDOA Reply Br. at 1-2) has no relevance. KDOA's suggestion that somehow CAS cannot properly recover the full amount for the years at issue here because ACF disallowed only the amount by which the claims for title IV-D funding exceeded actual costs (*id.*) is equally without merit. First, CAS has discretion to require recovery of all federal funds claimed for central services which were omitted from the SWCAPs because 2 C.F.R. Pt. 200, App. V ¶ C provides that such claims may not be reimbursed.⁵ Second, ACF's auditors, as we have explained, were able to determine the actual costs for the two later fiscal years based on the documents to which Kansas provided access. KDOA does not claim to have proffered similar documentation for the years at issue before or during this proceeding. We therefore conclude that CAS was within its authority to require full recovery of the funds for FYs 2003-2010.

CAS has indicated, however, that, in the alternative, at least the excess over actual costs must be refunded. KDOA, while not actually providing information about costs, does ask that CAS allow it to establish the actual costs and make a downward adjustment to the disallowance to reflect that. Because we have concluded that CAS was authorized to impose the total disallowance, we uphold it in this decision. KDOA has not established that CAS's determination was in any way arbitrary or capricious.

We note, however, that our decision does not preclude CAS from accepting whatever documentation KDOA submits to it and making any adjustment that it may find to be appropriate. Any such adjustment, however, would not be subject to appeal to the Board because it would be a matter within CAS's discretion given that the disallowance of the full amount is legally supported.

⁵ We note that CAS has not sought recovery of any federal funds for the period covered by ACF's uncontested disallowance, so no question of overlapping or duplicative refunds is presented.

4. The equitable defenses claimed by KDOA are not cognizable in this forum.

KDOA seeks to assert equitable defenses of unclean hands, stale claims, laches, waiver, and estoppel. KDOA Br. at 6-9. KDOA acknowledges that it is questionable whether such defenses are viable to preclude the federal government from enforcing rightful claims. *Id.* Even were such defenses viable and even were they appropriate in the present circumstances (neither of which is likely), the Board lacks the power to grant equitable relief because it is bound by all applicable laws and regulations. *See, e.g., Econ. Opportunity Comm'n of Nassau Cnty., Inc.*, DAB No. 2731, at 7 (2016) (“Board has consistently held that it “has no authority to waive a disallowance based on equitable principles,”” quoting *Municipality of Santa Isabel*, DAB No. 2230, at 10-11 (2009)); *accord Bedford Stuyvesant Restoration Corp.*, DAB No. 1404, at 20 (1993); 45 C.F.R. § 16.14.

KDOA stresses that it did not commit fraud or intentionally hide the funds at issue. KDOA Br. at 9. No such allegation was made by any party. Nothing in the record, however, supports KDOA’s further assertions that CAS was knowingly waiving or delaying reclaiming funds. *Id.* at 8-9. Certainly if, as it asserts, KDOA was not aware of the client state agencies passing on the costs of KDOA’s setoff fees to federally-funded programs, KDOA can hardly expect CAS to have known of how Kansas chose to finance its debt collection activities.

Finally, KDOA contends for the first time in its reply brief that it is not the correct party from which CAS may seek recovery because KDOA “does not know what federal programs all participants in the setoff program operate, or what costs those participants may charge to federal programs,” and because had KDCFS “not sought and received federal reimbursement for setoff collection assistance fees then there would be no basis for CAS to issue its determination herein seeking repayment.” KDOA Reply Br. at 4. This belated argument is without merit. KDOA undertook to negotiate with CAS an allocation agreement covering Kansas central services costs and omitted a significant program under which it obtained funds derived from federally-funded programs. CAS is not obliged to mediate among state agencies any disagreement about how the recovery of improperly obtained federal funds is to be repaid.

Conclusion

For the reasons explained above, we uphold the disallowance.

_____/s/
Sheila Ann Hegy

_____/s/
Constance B. Tobias

_____/s/
Leslie A. Sussan
Presiding Board Member