

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

New York State Office of Children & Family Services
Docket No. A-13-7
Decision No. 2486
November 29, 2012

DECISION

The New York State Office of Children & Family Services (New York) appeals a determination by the Administration for Children and Families (ACF) to impose a penalty in the amount of \$289,649 under section 477 of the Social Security Act. A state that receives funds through the John H. Chafee Foster Care Independence Program (CFCIP) is required to collect and report a variety of data to ACF on a semi-annual basis, including data on each youth who receives independent living services paid for or provided by the state with CFCIP funds. 45 C.F.R. §§ 1356.81(a), 1356.82(a)(1), 1356.83(a). Despite receiving CFCIP funds, however, New York failed to submit any data on the independent living services it provided to youth with its CFCIP funds for the data reporting period ending March 31, 2012. New York concedes that it failed to submit the required data, but argues that under the applicable regulations, it was subject to only a 1.25% penalty for violating “data standards” instead of the 2.5% penalty imposed by ACF for violating “file submission standards.”

In its notice of appeal, New York noted it had a pending appeal before the Board that concerned “the identical issue for the immediately-prior reporting period” and requested a stay of the new appeal pending a decision in the prior appeal. On November 1, 2012, the Board granted New York’s request. On November 7, 2012, the Board issued *New York State Office of Children & Family Servs.*, DAB No. 2483, in which the Board upheld the 2.5% penalty ACF imposed on New York based on New York’s failure to submit any data on the independent living services New York provided to youth with its CFCIP funds for the data reporting period ending September 30, 2011. In DAB No. 2483, the Board concluded that ACF’s interpretation of the regulations as requiring imposition of a 2.5% penalty for violation of “file submission standards” in this situation was entitled to deference because ACF’s interpretation was reasonable and New York had adequate notice of the interpretation.

On November 27, 2012, New York notified the Board that it consents to the issuance of a summary decision in this appeal based on the Board’s decision in DAB No. 2483. ACF also did not object to the issuance of a summary decision.

Conclusion

Based on the analysis in DAB No. 2483, which we incorporate by reference in its entirety, we uphold the penalty in full.

/s/
Leslie A. Sussan

/s/
Constance B. Tobias

/s/
Sheila Ann Hegy
Presiding Board Member