

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Louisiana Department of Children and Family Services
Docket No. A-11-120
Decision No. 2455
April 13, 2012

DECISION

The Louisiana Department of Children and Family Services (DCFS or Louisiana) appeals the August 17, 2011 determination of the Administration for Children and Families (ACF) denying DCFS's application for an award under the Emergency Contingency Fund for State Temporary Assistance for Needy Families (TANF) program. DCFS applied for an award based on payments made by British Petroleum (BP) from April 20, 2010 through August 23, 2010 for claims filed by Louisiana residents affected by the Deepwater Horizon oil spill. ACF determined that these payments were not a type of expenditure that qualified for an award. ACF also determined that DCFS was not entitled to an award based on its estimate of the amount of qualifying payments because DCFS's claim should have been based on actual expenditures and because the methodology used to make the estimate was not reasonable.

As discussed in detail below, we conclude that ACF did not err in denying DCFS's application on these grounds.

Legal Background

The TANF Program and State Maintenance of Effort (MOE) Expenditures

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, created the TANF program under Title IV-A of the Social Security Act (Act).¹ The TANF program was reauthorized and amended by provisions of the Deficit Reduction Act of 2005, Pub. L. No. 109-171 (2006).

¹ The current version of the Social Security Act can be found at http://www.socialsecurity.gov/OP_Home/ssact/ssact.htm. Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section. Also, a cross-reference table for the Act and the United States Code can be found at 42 U.S.C.A. Ch. 7, Disp Table.

Section 404(a)(1) provides that a State to which a TANF grant is made “may use the grant . . . in any manner that is reasonably calculated to accomplish the purpose of this part[.]” The purposes of the TANF program are to—

- provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- encourage the formation and maintenance of two-parent families.

Act § 401(a); *see also* 45 C.F.R. § 260.20.² Assistance under the TANF program is available only for “needy families with (or expecting) children[.]” Act § 402(a)(1)(A)(i); *see also* Act § 408(a)(1).

To receive its full allocation of federal TANF funds, a state must expend a specified level of state funds (based on historic state welfare expenditure levels) to assist eligible families and/or expectant mothers. Act § 409(a)(7); 45 C.F.R. § 263.1. These state funds are referred to as “State MOE expenditures.” 45 C.F.R. § 260.30. The Board has recognized historically that, in general, maintenance of effort provisions are intended to prevent state and local governments from reducing expenditures of their own funds in federally assisted programs[.]” *California Dept. of Aging*, DAB No. 301, at 1 (1982).

The TANF regulations define the term “expenditure,” in relevant part, as “any amount of Federal TANF or State MOE funds that a State expends, spends, pays out, or disburses” 45 C.F.R. § 260.30. Section 263.2(a) provides that “[e]xpenditures of State funds in TANF or separate State programs may count” toward meeting a State’s basic MOE requirement if they are made for specified types of benefits or services, including “[a]ny other use of funds allowable under section 404(a)(1) of the Act.” Section 263.2(e) provides that MOE may include “allowable costs borne by others in the State (e.g., local government), including cash donations from non-Federal third parties (e.g., a non-profit organization) and the value of third party in-kind contributions,” if:

² The regulations implementing the TANF legislation appear at 45 C.F.R. Parts 260 – 265. ACF published proposed and final regulations on November 20, 1997 (62 Fed. Reg. 62,124) and April 12, 1999 (64 Fed. Reg. 17,720), respectively, and technical and correcting amendments to the final rule on July 26, 1999 (64 Fed. Reg. 40,290). ACF published interim and final regulations implementing the Deficit Reduction Act provisions on June 29, 2006 (71 Fed. Reg. 37,454) and February 5, 2008 (73 Fed. Reg. 6772), respectively.

- (1) The expenditure is verifiable and meets all applicable requirements in 45 C.F.R. §§ 92.3 [administrative requirements for grants to states, definitions]; and 92.24 [cost sharing];
- (2) There is an agreement between the State and the other party allowing the State to count the expenditure toward its MOE requirement; and,
- (3) The State counts a cash donation only when it is actually spent.

Section 92.24(b)(6) provides that costs and third-party in-kind contributions “counting towards satisfying a cost-sharing or matching requirement must be verifiable” and “must show how the value placed on third party in-kind contributions was derived.”

In general, benefits or services may count toward MOE only if they have been provided to or on behalf of an “eligible family.” 45 C.F.R. § 263.2(b); Act § 409(a)(7)(B)(i)(I); 64 Fed. Reg. at 17,817-19. The term “eligible family,” as defined by each state, must:

- (1) Be comprised of citizens or non-citizens who:
 - (i) Are eligible for TANF assistance;
 - (ii) Would be eligible for TANF assistance, but for the time limit on the receipt of federally funded assistance; or
 - (iii) Are lawfully present in the United States and would be eligible for assistance, but for the application of title IV of PRWORA;
- (2) Include a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual); and
- (3) Be financially eligible according to the appropriate income and resource (when applicable) standards established by the State and contained in its TANF plan.

45 C.F.R. § 263.2(b).

In a 2004 program announcement, ACF issued a “[c]larification that third party cash or in-kind may count toward a State’s or Territory’s TANF maintenance-of-effort (MOE) requirement.” TANF-ACF-PA-2004-01, available at <http://www.acf.hhs.gov/programs/ofa/policy/pa-ofa/2004/pa200401.htm>. The program announcement also states:

A cash donation does not in-and-of-itself constitute an expenditure. The money must actually be used for an allowable purpose for it to count toward the State’s MOE requirement. Donations from non-Federal third parties need not be transferred to the State or local agency and under its administrative control, or donated without any restriction. Nevertheless, the third party must be aware of and agree with the State’s intentions. Accordingly, the State records must include an agreement between the State and the third party permitting the State to count the expenditure toward its MOE requirement.

Id. The program announcement further states that “TANF MOE funds must be spent on eligible families” and that, “[r]egardless of the source of the expenditures, the State’s records must show that all the costs are verifiable and meet all applicable requirements in 45 CFR 263.2 through 263.6 and 45 CFR 92.24” *Id.*

The TANF Emergency Contingency Fund

Section 2101 of the 2009 American Recovery and Reinvestment Act, Pub. L. No. 111-5, added section 403(c) to the Act to create a temporary TANF Emergency Contingency Fund (ECF) for fiscal years (FYs) 2009 and 2010.³ States with increases in certain types of expenditures, including “non-recurrent short term benefits,” are eligible for ECF awards.⁴ Section 403(c)(3)(B) provides that for each calendar quarter in FY 2009 or 2010, “the Secretary shall make a grant from the Emergency Fund”—

(ii) . . . if the total expenditures of the State for non-recurrent short term benefits in the quarter, whether under the State program funded under this part [Part A of title IV of the Act] or as qualified State expenditures, exceeds the total expenditures of the State for non-recurrent short term benefits in the corresponding quarter in the emergency fund base year of the State.

The term “qualified State expenditures” refers to State MOE expenditures.⁵ *See* Act §§ 403(c)(9)(C), 409(a)(7); *see also* 45 C.F.R. § 260.30 (defining “Qualified State Expenditures” as “the total amount of State funds expended during the fiscal year that count for basic MOE purposes”).

³ Section 403(c) of the Act was codified as 42 U.S.C. § 603(c) but was repealed by section 2101(a)(2) of Public Law No. 111-5. The Emergency Contingency Fund created by former section 403(c) is separate from the contingency fund authorized by section 403(b) of the Act, which is not at issue here.

⁴ A state may also apply for emergency contingency funds based on increases in: 1) its caseload and expenditures for basic assistance; and 2) its expenditures for subsidized employment. DCFS identified the BP payments as “short-term, non-recurrent expenditures,” however. DCFS letter dated 9/7/11, at 1; DCFS Br. at 4.

⁵ Section 260.31(b) of 45 C.F.R. provides that the term “assistance” excludes “Nonrecurrent, short-term benefits that: (i) Are designed to deal with a specific crisis situation or episode of need; (ii) Are not intended to meet recurrent or ongoing needs; and (iii) Will not extend beyond four months.” This does not preclude such benefits from qualifying as State MOE expenditures, however. *See* 45 C.F.R. §§ 260.31(c)(1) (providing that this definition of assistance does not apply for purposes of determining expenditures that qualify as State MOE expenditures under Part 263, subpart A); *see also* section 263.2(d).

Section 403(c)(3)(B)(iii) provides that the amount of the “grant” to be made to a State for a quarter “shall be an amount equal to 80 percent of the excess described” in section 403(c)(3)(B)(ii).

Section 403(c)(4) provides in relevant part:

In determining . . . the expenditures of a State for . . . nonrecurrent, short-term benefits . . . during any period for which the State requests funds under this subsection, . . . the Secretary may make appropriate adjustments to the data, on a State-by-State basis, to ensure that the data are comparable with respect to the groups of families served and the types of aid provided. The Secretary may develop a mechanism for collecting expenditure data, including procedures which allow States to make reasonable estimates, and may set deadlines for making revisions to the data.

Factual Background

The following facts shown by the record are undisputed. On June 2, 2011, DCFS signed a Memorandum of Understanding (MOU) with BP which, by its own terms, was “effective as of April 10, 2010.” DCFS Ex. A at 1, 4. The MOU states in part:

I. Background

* * * * *

Pursuant to federal regulations and HHS policy, the value of certain goods, services and expenditures provided to Eligible Families in a state by certain third-party organizations (such as BP) may count toward that state’s MOE requirement.

BP has provided, among other things, payments to individuals for losses experienced as a result of the oil spill . . . following the Deepwater Horizon Incident on April 20, 2010.

Individual claims were administered by BP through August 23, 2010, at which time by agreement with the Administration, Kenneth Feinberg took over administration of these claims on BP’s behalf. Payments are based upon economic loss suffered as a result of the Deepwater Horizon Oil spill.

DCFS has requested that BP advise DCFS of the total value of claims paid by BP during the periods of April 20, 2010 through June 30, 2010 and July 1, 2010 through August 23, 2010 and any other data that can assist in determining the amount of payments made to TANF-eligible families. DCFS may, if and to the extent appropriate, count a portion of such total value toward the state’s MOE

requirement. BP is willing to advise DCFS of such total value subject to the terms and conditions contained in the MOU.

* * * * *

III. Total Value

BP will endeavor in good faith to:

Determine the total value of expenses paid and any other data that can assist in determining the amount of payments made to TANF-eligible families for the following time periods:

April 20, 2010 – June 30, 2010

July 1, 2010 – August 23, 2010

Advise DCFS of such total value in writing. Such determination shall be based upon the sum of applicable expenditures as represented on individual claims.

IV. Eligibility

DCFS has sole responsibility for determining all of the following, pursuant to and in compliance with the laws, rules, regulations and policies applicable to the TANF program: (A) whether under the circumstances it is appropriate for DCFS to rely on the total values provided by BP pursuant to Section III above in DCFS'[s] determination of MOE; and (B) what portions, if any, of such total values were provided to Eligible Families who meet 200% of poverty, include a minor child under 18 years of age and are allowable for DCFS to claim as part of MOE.

BP specifically represents that the payments it made were to compensate claimants for claims made as a result of the Deepwater Horizon incident. BP makes no characterization regarding the qualification of these payments for credit towards DCFS's MOE requirement.

BP Ex. A at 1-3.

BP did not collect information based on which DCFS could determine whether the BP payments were made to TANF-eligible families. In the absence of actual data, DCFS estimated the amount of payments made to eligible families using a methodology described later in this decision. According to ACF, DCFS sought an "award totaling approximately \$29.4 million." ACF Br. at 1.

Pursuant to section 410(b)(1) of the Social Security Act, DCFS sought Board review of ACF's determination denying the award. Each party filed a brief and exhibits in accordance with the Board's procedures. DCFS had the opportunity to file a reply to ACF's brief but chose not to do so. DCFS e-mail dated 2/20/12.

Analysis

In denying DCFS's application for an ECF award, ACF concluded that the payments made by BP "are not allowable third party MOE expenditures because they do not constitute a donation" and "are not reasonably calculated to meet a TANF purpose[.]" ACF letter dated 8/17/11, at 1. ACF also concluded that the use of "an estimating methodology" was not justified, and that, in any event, DCFS's methodology "is not a reasonable means of estimating the expenditures for the TANF-eligible population." *Id.* at 2.

Below, we explain why we agree with ACF and conclude that DCFS was not entitled to an ECF award for any of the BP payments in question.

1. *We sustain ACF's determination that the BP payments did not qualify as State MOE expenditures eligible for an ECF award.*

The TANF regulations at 45 C.F.R. § 263.2(e) allow costs borne by non-federal third parties, rather than the State itself, to qualify as part of the State's MOE expenditures. DCFS takes the position that the payments made by BP may be counted as part of the State's MOE expenditures because they are "cash donations" within the meaning of section 263.2(e). In support of its position, DCFS asserts that the BP payments at issue here were made outside of the official claims process administered by the Gulf Coast Claims Facility, which applied only to claims filed beginning August 23, 2010 and was subject to a statutory liability limit of \$35 million. DCFS Br. at 2. In addition, according to DCFS, "BP did not mandate proof of income to process these claims and did not require a waiver of any rights to sue BP. Claimants simply had to prove that they lived or worked in the impacted area, that they suffered a loss, and that there was a direct relationship between the oil spill and the loss." *Id.* Thus, DCFS argues, the BP payments were "gratuitous" and properly treated as donations. *Id.* In essence, DCFS's position is that BP's payments constituted a "donation" within the meaning of section 263.2(e) because BP was not legally compelled to make the payments.

We assume for purposes of this decision that BP was not legally compelled to make the payments but nonetheless agree with ACF that the payments did not constitute a donation within the meaning of section 263.2(e). In its letter notifying DCFS that it was not approving its request for an award, ACF stated: "BP made payments to individuals and families affected by the Deepwater Horizon oil spill in order to reimburse them for losses they experienced as a result of a harm it caused; thus BP was liable for these costs." ACF

letter dated 8/17/11, at 1. ACF's letter quoted the MOU, which states that "BP specifically represents that the payments it made were to compensate claimants for claims made as a result of the Deepwater Horizon incident. . . ." *Id.* (quoting MOU at 3). ACF continued: "Payments made by a third-party to compensate recipients for a harm it itself caused do not constitute a donation[.]" *Id.* DCFS does not dispute that the claims paid by BP were for losses that were sustained as a result of BP's own actions. Thus, by making the payments, BP was in effect replacing resources it had taken away from the recipients. Putting it another way, but for BP's actions resulting in the oil spill, these payments would not have been made. The ordinary meaning of the term "donation" (which is not defined in the TANF regulations) is "a free contribution: gift." *See* <http://www.merriam-webster.com/dictionary/donation>. When the entire transaction between BP and each recipient of the payments is taken into account, it is clear that BP's payments constituted compensation, not a gift.

Moreover, even had BP's payments constituted a donation, TANF-ACF-PA-2004-01 provides, and DCFS does not dispute, that a donation by a non-federal third party must satisfy a TANF purpose to qualify as a State MOE expenditure. We are not persuaded by DCFS's argument that BP's payments satisfied a TANF purpose. According to DCFS,

[t]hese BP expenditures meet TANF purpose #1 [in section 401(a) of the Act and 45 C.F.R. § 260.20] in that they provided assistance to needy families so that children may be cared for in their own homes or in the homes of relatives. These short-term, non-recurrent expenditures provided assistance to needy families who were impacted by the oil spill and who more than likely would have had to apply for regular TANF assistance if not for the BP payments, thus reducing the state and federal needs for assistance.

DCFS letter dated 9/7/11, at 1; DCFS Br. at 4. As indicated above, however, the BP payments simply provided compensation for losses the recipients suffered at BP's hands. Because the recipients were in no better position than if they had not suffered these losses in the first instance, the payments did not reduce the need any recipient may have had for State assistance under TANF. Moreover, as we discuss in the next section, DCFS did not establish (through either actual data or a reasonable estimating methodology) that the recipients were eligible for TANF assistance. Thus, DCFS failed to show that the BP payments satisfied the TANF purpose it identified.

Furthermore, the BP payments do not qualify as State MOE expenditures because they are not allowable costs under the cost principles in Office of Management and Budget (OMB) Circular A-87, now codified at 2 C.F.R. Part 225, App. A. (OMB Circular A-87 is made applicable to grants to states by 45 C.F.R. § 92.22(b).) The cost principles state that "fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of . . . Federal, State, local, or Indian tribal laws and regulations are unallowable . . ." 2 C.F.R. Part 225, App. B, ¶16. It is apparent from the foregoing

discussion that the BP payments were in the nature of compensation for damages to the recipients for injuries related to an alleged violation of federal or State law.

We therefore conclude that the BP payments did not qualify as State MOE expenditures eligible for an ECF award. This alone was a sufficient basis for denying DCFS's application for an award; however, we explain below why we also sustain the other grounds on which ACF denied the award.

2. *We sustain ACF's determination that DCFS's methodology did not yield a reasonable estimate of BP payments to TANF-eligible families.*

A. *DCFS did not show that actual data were not reasonably available.*

In its letter denying DCFS's application for an ECF award, ACF stated that it applied the following "principles" in determining that DCFS's estimate of the amount of BP's payments to TANF-eligible families was not justified:

. . . States must: (1) use actual data if reasonably available; (2) demonstrate that actual data are not reasonably available, if the State reaches that conclusion; and (3) describe the methodology and explain why it is reasonable (both in estimating the share of families it claims and the associated expenses), if the State seeks to use an estimating methodology.

ACF letter dated 8/17/11, at 2. ACF further stated that "the limited scenarios in which we have allowed estimates are those in which requiring actual data would be infeasible or materially affect the ability to deliver the benefit or service." *Id.* ACF found that "Louisiana has not demonstrated that the data necessary to determine TANF eligibility were not reasonably available." *Id.* (As we discuss in section 2.B. below, ACF also determined that even if DCFS was justified in using "an estimating methodology," the methodology it used was not reasonable. *Id.*)

DCFS does not dispute that estimates are acceptable only in the limited circumstances described by ACF. DCFS takes the position, however, that requiring actual data in this case "was not only infeasible but impossible and unnecessary[.]" DCFS Br. at 5. According to DCFS, BP's "claims process was created and implemented in the context of a disaster, and at the time, BP had no reason to collect information on claimants' income or household composition." DCFS Br. at 5. It is undisputed that for a family to be eligible for TANF assistance in the State, its income had to be below 200% of the federal poverty level for a two-person family and a child under age 18 (or pregnant mother) had

to be living in the home.⁶ DCFS also asserts that it “was not able to influence the data gathered in the claims process” because “BP and DCFS had not discussed the possibility of claiming any of BP’s expenditures under the emergency claims/payments program when BP was administering it.” *Id.* at 5-6.

According to ACF, however, DCFS informed ACF “in earlier discussions . . . that BP did in fact collect the data necessary for supporting allowable TANF expenditures” but that BP had “declined multiple requests to provide the data to Louisiana citing privacy issues.” *Id.* at 12. ACF argues that in any event “[t]he fact that a third-party donor does not provide complete and accurate data [is] not a valid reason for ACF to approve an estimate to support TANF third-party expenditures.” *Id.*, citing 64 Fed. Reg. at 17,869 (preamble to 1999 final rule stating with respect to TANF quarterly reports required by section 265.7 that “regardless of the source, the State is responsible for reporting complete and accurate data”).

We find no error in ACF’s conclusion that DCFS failed to show that actual data were not reasonably available. Assuming BP in fact collected the information necessary to determine whether the recipients of its payments were TANF-eligible, DCFS has not explained why BP could not have provided DCFS with de-identified information about the amount paid to TANF-eligible families without violating privacy concerns. *See Indiana Family and Social Services Administration*, DAB No. 2453, at 12 (2012) (“While demographic data is included in protected ‘individually identifiable health information’ under the HIPAA privacy rule, there are no restrictions on the use or disclosure of de-identified health information, which neither identifies nor provides a reasonable basis to identify an individual. 45 C.F.R. §§ 160.103, 164.514; *see also Summary of the HIPAA Privacy Rule*, DHHS OGC, available at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/privacysummary.pdf>.”).

Even if BP did not collect the necessary information, we are not persuaded that actual data were not reasonably available. DCFS’s assertion that BP could not collect the necessary information because the payments were made “in the context of a disaster” is subject to question since BP’s own website indicated that documentation including tax records, wage loss statements and financial statements (any of which might show a family’s income level) could be provided for claims purposes. *See Frequently Asked Questions about the BP Claims Process*, available at http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/incident_response/STAGING/local_assets/downloads_pdfs/FAQs_about_the_BP_Claims_Process.pdf

⁶ Neither DCFS nor ACF made any reference to the requirement in 45 C.F.R. § 263.2(b) that the recipient’s family be comprised of citizens or non-citizens “lawfully present in the United States.” We assume for purposes of this case that there was no question that the families of recipients were lawfully present in the United States.

(cited in ACF Br. at 12). Moreover, although DCFS was no longer “able to influence the data gathered in the claims process” when it entered into the MOU in 2011, DCFS was on notice when BP first started making the payments in April 2010 of what information would be required to support an application for an ECF award. In any case, DCFS had a responsibility to assure that the MOU required BP to collect the necessary information. DCFS does not explain why it did not seek to enter into an MOU earlier when it could have negotiated about data collection. The fact that DCFS waited to enter into the MOU until it was too late to require BP to collect the necessary information is hardly an excuse for the lack of actual data.

We therefore conclude that DCFS has not shown that actual data were not reasonably available. Further, we explain below why, had actual data not been reasonably available, DCFS’s methodology did not provide a reasonable estimate.

B. DCFS failed to show that its estimating methodology was reasonable.

To determine the amount of payments BP made to the TANF-eligible population, DCFS used the U.S. Census Bureau’s Current Population Survey Annual Social and Economic Supplement for 2009 (CPS survey). DCFS first subtracted from the number of households in the State with income under 200% of poverty (692,000) the number of households in the State with income under 200% of poverty and no related children under 18 (423,000). The difference (269,000) was the number of households in the State with income under 200% of poverty and a related child under age 18. DCFS then divided that number by the number of households in the State (1,709,000). The quotient, expressed as a percentage, is 15.7%. DCFS Br. at 6; DCFS Ex. B at 1. Although there is no express statement to this effect in the record, it appears that DCFS multiplied the total payments made by BP during the period in question by 15.7% to determine the payments made by BP to TANF-eligible families. This methodology assumes that the percentage of TANF-eligible families to which BP made payments was approximately the same as the percentage of TANF-eligible families in the State, as well as that each recipient of the BP payments received approximately the same amount.

ACF determined that this methodology is not reasonable. Among other things, ACF asserts that the methodology “assumes without support that a general population survey would represent the characteristics of those who are recipients of the emergency claims/payments related to the BP oil spill[.]” ACF Br. at 15. According to ACF, the CPS survey “uses statewide data” while the recipients of the BP payment “primarily reside by the State’s coast.” *Id.* at ACF Br. at 15; ACF letter dated 8/17/11, at 2. ACF also asserts that the methodology “does not take in[to] consideration that the BP oil spill payments are highly variable and there may be significant differences among damage compensation recipients depending on the industry in which they worked.” ACF Br. at 15. ACF further asserts that the “CPS survey sample does not yield precise enough estimates of the targeted populations on which to base an entire estimate.” *Id.* Finally,

ACF points out that the CPS survey “captures data from 2008, not 2010,” the year in question here.⁷ *Id.*

Even without the benefit of expert testimony (which ACF did not provide), it seems clear that the methodology would not yield an accurate estimate if there were no basis for the assumption that the proportion of TANF-eligible families to whom BP made payments was similar to the proportion of TANF-eligible families in the State or for the assumption that the amount of each payment made by BP was approximately the same. DCFS made no attempt to justify either assumption. Accordingly, we need not consider the other grounds on which ACF found DCFS’s estimating methodology unreasonable.

The only argument DCFS advances in support of its use of its estimating methodology is that ACF approved a general population survey as a reasonable means of estimating expenditures for the TANF-eligible population by the American Red Cross after Hurricane Katrina, so that “there is a precedent for using data from general population surveys as a reasonable estimation methodology.” DCFS Br. at 6. According to ACF, however, while it approved an estimate of these Red Cross expenditures, the methodology used to derive this estimate “was based on three data sources, and it was not based entirely on a general population survey.”⁸ ACF Br. at 14. Thus, the fact that ACF accepted the estimate of Red Cross expenditures has no bearing on whether DCFS’s estimate was acceptable.

We therefore conclude that ACF properly determined that the methodology DCFS used to estimate the amount of BP’s payments to TANF-eligible families was not reasonable.

We note that DCFS requests that the Board remand the case in the event the Board rejects DCFS’s arguments that actual data were not reasonably available and that its estimating methodology was reasonable. DCFS claims that it would “attempt to secure from BP information that would limit the expenditures reported to DCFS to individuals whose reported loss of income would not have exceeded the 200% of the federal poverty level for a two person family.” DCFS Br. at 7. No purpose would be served by a remand, however. We concluded above that the BP payments did not qualify as State MOE expenditures eligible for an ECF award. Thus, even if DCFS were able to determine the actual amount of BP payments to TANF-eligible families, such payments would not qualify for an award.

⁷ The data was for 2008 but collected by the Census Bureau in 2009. DCFS Ex. B at 1.

⁸ ACF also explains that the use of estimates rather than actual data was warranted in the case of the Red Cross expenditures because Hurricane Katrina, unlike the BP oil spill, displaced thousands of people from their homes and destroyed their financial records. *See* ACF Br. at 14.

Conclusion

Based on the foregoing analysis, we sustain ACF's determination.

/s/
Sheila Ann Hegy

/s/
Constance B. Tobias

/s/
Leslie A. Sussan
Presiding Board Member