

**Department of Health and Human Services**  
**DEPARTMENTAL APPEALS BOARD**  
**Appellate Division**

Central Alabama Comprehensive Health, Inc.  
Docket Nos. A-14-71, A-15-6  
Decision No. 2625  
March 16, 2015

**DECISION**

Central Alabama Comprehensive Health, Inc. (CACHI), a community health center (CHC), appeals two disallowances of Health Care Cluster Grant funds taken by the Health Resources and Services Administration (HRSA) of the Department of Health and Human Services (HHS).<sup>1</sup> The appeal docketed under Docket No. A-14-71 was dated May 7, 2014 and involves a disallowance of \$144,611 taken by HRSA in a letter dated April 30, 2014. The appeal docketed under Docket No. A-15-6 was dated October 13, 2014 and involves a disallowance of \$40,028 taken by HRSA in a letter dated September 30, 2014. In an order dated November 18, 2014, the Board consolidated the appeals. The first disallowance covered the budget period April 1, 2010 through March 31, 2011, the second the budget period April 1, 2011 through March 31, 2012. HRSA took the disallowances based on audit report findings that CACHI failed to adequately document the allowability of grant fund expenditures and to ensure adequate internal control over the administration of federal assistance. For the reasons explained below, the Board upholds both disallowances.

**Legal Background**

This matter arises out of a federal grant awarded by HRSA to CACHI under Title III, Section 330 of the Public Health Services Act (Section 330), 42 U.S.C. § 254b.<sup>2</sup> Section

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<sup>1</sup> HRSA indicates that CACHI ceased operating as a medical provider in June 2013 due to ongoing financial issues. *See* HRSA Response at 2 (stating HRSA's understanding that operations ceased on June 30, 2013); HRSA Ex. 5, at unnumbered page 1 (OIG statement that HRSA confirmed "patient services provided with Health Center Program funding were discontinued as of June 28, 2013"). CACHI does not dispute this.

<sup>2</sup> HRSA states that the Patient Protection and Affordable Care Act, Section 10503, provided some of the grant funding, but the grant award documents cite only Section 330 in the funding authority box. *See* HRSA Exs. 1, 4. We note that the "Recommendations" relating to the disallowed costs in the OIG's September 13, 2013 letter refer to "ARRA-2011-4" and "ARRA-2011-6." The acronym "AARA" may be a reference to the American Recovery and Reinvestment Act. *See* HRSA Ex. 2, at unnumbered pages 3, 4; *see also* Plea Agreement, United States District Court for the Northern District of Alabama Southern Division at 4 (submitted by CACHI with its December 4, 2014 letter to the Board and stating that the "American Recovery and Reinvestment Act (ARRA) afforded additional federal funding . . ." for grant programs administered by HRSA). Since the parties have not raised an issue about the legislative appropriation authorizing the grant funds at issue, we need not discuss this matter further.

330 authorizes HRSA to award funding to public and non-profit community health centers (CHCs) that meet Section 330 requirements. The regulations at 42 C.F.R. Part 51c implement the Section 330 CHC grant authority. CHC grantees must comply with the uniform administrative requirements for non-profit entities at 45 C.F.R. Part 74 and the cost principles in Office of Management and Budget (OMB) Circular No. A-122, codified at 2 C.F.R. Part 230 (2005-2013) that are applicable to non-profit grantees such as CACHI.<sup>3</sup> *See* 45 C.F.R. §§ 74.1(a)(1), 74.27.

Under the cost principles, a cost is allowable under a federal award if, among other things, it is “reasonable for the performance of the award and . . . allocable thereto.” 2 C.F.R. Part 230, App. A ¶ A.2.a. A cost is reasonable “if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs.” *Id.* ¶ A.3. A cost is allocable to a grant “in accordance with the relative benefits received.” *Id.* ¶ A.4.a.

In order to be allowable, costs also must be “adequately documented.” 2 C.F.R. Part 230, App. A ¶ A.2.g. The Part 74 regulations require a grantee to have in place a financial management system that provides “[e]ffective control over and accountability for all funds, property and other assets.” 45 C.F.R. § 74.21(b)(3). A grantee’s financial management system also must provide “[r]ecords that identify adequately the source and application of funds for HHS-sponsored activities” and “[a]ccounting records, including cost accounting records, that are supported by source documentation.” *Id.* § 74.21(b)(2), (7). Acceptable source documentation includes documents such as cancelled checks, paid bills, payrolls, time and attendance records, and contract and subgrant award documents. *Cf.* 45 C.F.R. § 92.20(b)(6).

Part 74 further provides that non-profit grantees are subject to the audit requirements in the Single Audit Act Amendments of 1996 (31 U.S.C. §§ 7501-7507) and revised OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). 45 C.F.R. § 74.26(a). Under those provisions, non-federal entities that expend \$500,000 or more in a year in federal awards must have a single, comprehensive financial and compliance audit of their programs for that year. 31 U.S.C. § 7502(a)(1)(A); 68 Fed. Reg. 38,401 (June 27, 2003) (revising the threshold amount from \$300,000 to \$500,000).

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<sup>3</sup> Effective December 26, 2014, Part 74 of Title 45 of the Code of Federal Regulations was removed and reserved and a new Part 75 was added. *See* 79 Fed. Reg. 75871, 75889 (Dec. 19, 2014). By this change, DHHS adopted OMB’s uniform administrative requirements, cost principles and audit requirements for federal awards to non-federal entities. We cite to Part 74 since that was the applicable regulation at the time of the grant award at issue.

Under the “applicable regulations and cost principles, a grantee bears the burden of documenting the existence and allowability of its expenditures of federal funds.” *Touch of Love Ministries, Inc.*, DAB No. 2393, at 3 (2011). “Once a cost is questioned as lacking documentation, the grantee bears the burden to document, with records supported by source documentation, that the costs were actually incurred and represent allowable costs, allocable to the grant.” *Northstar Youth Servs., Inc.*, DAB No. 1884, at 5 (2003).

The Board is “bound by all applicable laws and regulations” when reviewing a disallowance. 45 C.F.R. § 16.14. Accordingly, where a disallowance is authorized by law and the grantee has not disproved its factual basis, the Board must affirm the disallowance. *Touch of Love Ministries, Inc.* at 3.

## **Factual Background**

### **1. The awards, audits, and disallowances**

On March 16, 2010, HRSA issued Section 330 award number H80CS00414-09-00 in the amount of \$1,276,664 to CACHI for the budget period April 1, 2010 through March 31, 2011. HRSA Ex. 1. The Notice of Award provided that the award was subject to the terms and conditions of the Notice, Section 330 and the regulations at Part 51c and (as applicable here) Part 74 (incorporating the cost principles in OMB Circular A-122). *Id.* at unnumbered page 3.

In a letter dated September 13, 2013, the Office of Inspector General (OIG) notified CACHI that it had completed its review of Audit Report Number A-04-13-21740 on the April 1, 2010 through March 31, 2011 budget period. HRSA Ex. 2, at unnumbered page 1. The letter stated that the audit had been performed by Banks Finley White, CPAs and, to the OIG’s belief, met Federal audit requirements. *Id.* The letter further referred to an attachment summarizing the audit findings and informed CACHI that HRSA would be responsible for making any final determinations as to actions to be taken to resolve the audit and that CACHI could submit to HRSA a written response to the audit report. *Id.* The audit found material noncompliance in multiple areas. *Id.* at unnumbered pages 3-4. The disallowed amounts pertain to the finding, under “Cash Disbursements,” that CACHI failed to ensure adequate documentation of grant fund expenditures and, under “Misappropriation of Funds,” failed to develop and implement procedures to ensure adequate internal control over the administration of federal assistance and adequately safeguard assets. *Id.* The audit report questioned a total of \$144,611 in expenditures

based on these findings. *Id.* CACHI did not submit any documentation to support the allowability of the questioned costs; accordingly, HRSA disallowed the questioned costs in a letter dated April 30, 2014.<sup>4</sup> HRSA Ex. 3.

On March 10, 2011, HRSA issued another Section 330 award, award number H80CS00414-10-00, to CACHI in the amount of \$212,777.<sup>5</sup> CACHI Ex. J. This award was for the budget period April 1, 2011 through March 31, 2012, and the Notice of Award set forth the same terms and conditions and identified the same statute and regulations governing the grant as the award for the prior budget period. *Id.*

The OIG performed an audit of the April 1, 2011 through March 31, 2012 budget period and sent a report on that audit (audit report number A-04-14-23338) to CACHI on March 14, 2014. HRSA Ex. 5. This audit report questioned a total of \$40,028 in costs involving two of the same areas as the prior audit, “Cash Disbursements” and “Misappropriation of Funds.” *Id.* at unnumbered page 3. This time the findings cited CACHI’s failure to ensure that any questioned costs were determined and returned. *Id.* This report once again instructed CACHI to send any response to the audit findings to HRSA. *Id.* at unnumbered page 1. CACHI did not provide any documentation to support the allowability of the questioned costs; accordingly, by letter dated September 30, 2014, HRSA took a disallowance in the amount of \$40,028. HRSA Ex. 6.

## 2. Proceedings before the Board

As indicated above, CACHI filed a Notice of Appeal in Docket No. A-14-71 (the \$144,611 disallowance) dated May 7, 2014. CACHI filed a brief and appeal file (consisting of Exhibits A-K) dated September 10, 2014. CACHI then filed the Notice of Appeal in Docket No. A-15-6 (the disallowance of \$40,028) dated October 13, 2014. In a letter dated November 14, 2014, the Presiding Board Member notified the parties that she proposed to consolidate the two appeals “because both relate to costs claimed under the same grant [albeit for different budget years] and appear to involve the same substantive bases for the disallowances.” Board letter dated 11/14/14, at 2. The Presiding Board Member also noted the following statement by CACHI in its Notice of Appeal in A-15-6: “We intend to make the same arguments as the bases for the appeal of . . . Appeal Board Docket No.: A-14-71, for they both arise out of the same facts and

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<sup>4</sup> The HRSA notice letters dated April 30 and September 30, 2014 actually stated that HRSA was requesting a “grant refund,” but under the regulations providing for Board review, this is the same as taking a disallowance. *See* 45 C.F.R. Part 16, Appendix A.C.(a)(1)(stating that the Board reviews disputes over final written decisions involving direct, discretionary grants that include “[a] disallowance or other determination denying payment of an amount claimed under an award, or requiring return or set-off of funds already received”).

<sup>5</sup> HRSA subsequently made additional awards for this budget period for a total award of \$1,398,873. CACHI Ex. K (issued 4/5/11); HRSA Ex. 4 (issued 6/3/11).

circumstances.” *See id.* On November 18, 2014, having received no objection to the proposal to consolidate, the Presiding Board Member wrote the parties that she was consolidating the appeals, designating Docket No. A-15-6 the “lead case” and uploading the filings in both cases to the electronic record of that docket number.<sup>6</sup> The Presiding Board Member also gave CACHI until December 1, 2014 to supplement the brief and appeal file it had submitted for its appeal in Docket No. A-14-71.

CACHI did not supplement its previously filed brief but, as discussed below, did file additional documents on June 23, and December 4, 2014.<sup>7</sup> Although CACHI’s December 4, 2014 submission was late, the Board accepted it as part of the record for the appeals. On December 18, 2014, HRSA filed Respondent’s Brief (HRSA Br.) and Appeal File. There have been no subsequent filings by the parties.

## **Analysis**

In its appeal brief (CACHI Br.), CACHI does not attempt to refute the audit findings on which both disallowances were based – that CACHI did not adequately document that the disallowed expenditures were allowable Section 330 grant expenditures and failed to develop and implement procedures to ensure adequate internal control over the administration of federal assistance and adequately safeguard assets. Nor does CACHI argue that HRSA had no authority to disallow the amounts disallowed in each case -- \$144,611 and \$40,028, respectively. Instead, CACHI argues that the management contractor, Birmingham Health Care (BHC), contracted by its Board of Directors “to manage all aspects of the health center operations” should be held responsible for reimbursing HRSA for the disallowed amounts. CACHI Br. at 2, 4-6. CACHI states that BHC “had complete control and responsibility for CACHI’s financial and accounting systems . . . [and] was subsequently responsible for all of CACHI’s financial management obligations, which included writing all checks to pay CACHI’s bills and obligations . . . .” *Id.* at 5. CACHI also asserts that its “Board had no knowledge of the misappropriation or embezzlement of funds, due to the failure of BHC consultants to report complete and accurate information to [the] CACHI Board.” *Id.* Finally, CACHI asserts that –

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<sup>6</sup> The appeal in Docket No. A-14-71 had been filed before appeals of final HRSA decisions under Part 16 became eligible for electronic filing.

<sup>7</sup> Since Docket Nos. A-14-71 and A-15-6 are consolidated and CACHI did not supplement the brief it filed in Docket No. A-14-71, we treat the arguments made in the latter brief as the arguments for both of its appeals.

when CACHI's Board was made aware of the financial irregularities and presumed embezzlement of funds by BHC, during the May 2011 HRSA site visit, CACHI's Board moved with all deliberate speed to terminate its management contract with BHC and filed a civil action against BHC for the return of CACHI's financial records and restitution of misappropriated funds.

*Id.*; see also CACHI Exhibit (Ex.) I (affidavit of the former president of CACHI's Board of Directors attesting that BHC's "misappropriat[ion] and mismanage[ment] of the \$144,611.00, which HRSA is requesting CACHI to repay . . . was done without notice, consent or authorization of the CACHI Board of Directors.")

CACHI's original appeal file consists largely of documents related to its civil action against BHC, an action filed in Jefferson County, Alabama, Circuit Court.<sup>8</sup> See CACHI Exs. C-F. On June 23, 2014, CACHI submitted another document from that civil suit, a court Order denying BHC's motion to dismiss the suit.<sup>9</sup> On December 4, 2014, after the appeals were consolidated, CACHI submitted a copy of the plea agreement entered by a BHC employee in a federal criminal case filed in the United States District Court for the Northern District of Alabama Southern Division and several PACER sheets (from the court's electronic filing system) showing the District Court docket entries in that case. These additional documents were submitted with a letter, in which CACHI stated that sentencing in the criminal case is set for March 10, 2015 and that "[r]estitution will be set at sentencing." CACHI letter dated 12/4/14, at 2. We have considered all of the additional documents CACHI submitted for our consideration as well as CACHI Exhibits A-K.

CACHI's argument that it should not be held responsible for the disallowance because its Board of Directors was unaware of and did not approve BHC's management (or mismanagement) of the grant funds has no merit. The Board has held, "The ultimate responsibility that all grant funds are properly expended . . . lies with the grantee" because "the legal relationship created by a grant award is between the Agency and the Grantee." *Pa. College of Podiatric Medicine*, DAB No. 299, at 3-4 (1982), quoting *In Cmty. Relations – Social Dev. Comm'n in Milwaukee Cnty.*, DAB No. 134, at 2 (1980). Likewise, the Board has held that a grantee's Board of Directors bears ultimate responsibility for corporate governance and conduct and compliance with grant

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<sup>8</sup> CACHI's appeal file also contains its Management Consulting Agreement with BHC (Ex. A); a CACHI Board resolution dated June 13, 2011 that CACHI says terminated its agreement with BHC (Ex. B); newspaper articles about two employees of BHC who pleaded guilty to federal health care fraud (Exs. G and H); the affidavit cited above; and two HRSA award notices for the grant at issue here (Exs. J and K).

<sup>9</sup> Accompanying this document was a letter informing the Board of the CACHI representative's change of address and asking the Board to consider the document submitted with the letter "as additional information in support of CACHI's appeal." CACHI letter dated 6/23/14.

requirements. *Vance-Warren Comprehensive Health Plan, Inc.*, DAB No. 2180, at 15 (2008), citing *Renaissance III*, DAB No. 2034, at 10-11 (2006). When it applied for and received the grant funds at issue here, CACHI's Board of Directors accepted the terms and conditions of those grants. In so doing, CACHI's Board of Directors "became a fiduciary of federal funds . . . and [therefore,] was responsible for ensuring that those funds were properly spent and accounted for . . . ." *Vance Warren* at 15.

Although *Vance-Warren* and *Renaissance III* involved grantee Board of Directors' responsibility for the conduct of their employees, CACHI has provided no reason why the same principle would not apply to a grantee Board of Directors' responsibility for the conduct of contractors it engages to manage its finances. We conclude that the same principle does apply. The fiduciary obligations of a grantee's Board of Directors with respect to stewardship of federal grant funds apply regardless of whether the issue is ensuring the quality and supervision of employees the Board of Directors hires or ensuring the quality and supervision of contractors the Board of Directors selects. Accordingly, we see no reasonable basis for concluding that CACHI is not responsible for BHC's failure to properly account for the expenditure of Section 330 grant funds and for repaying the disallowed costs as instructed by HRSA in its final decision letters.

We also reject CACHI's suggestion that the Board instruct HRSA to seek repayment "against BHC or its agents, found or confessed to being responsible for the embezzlement of these funds from CACHI." CACHI Br. at 6. The issue before the Board under its Part 16 review authority is whether HRSA's final decisions to disallow the \$144,611 and the \$40,028 are supported by law and the evidence of record. Having concluded that they are, we must uphold the disallowances. *See W. Va. Dep't of Health & Human Res.*, DAB No. 2185, at 20 (2008)(citing 45 C.F.R. §§ 16.14, 16.21 and holding that the Board must uphold a disallowance if it is supported by the evidence of record and is consistent with the applicable statutes and regulations). We have no authority to order HRSA to seek recovery of the disallowed funds from someone other than the grantee we have concluded is responsible for the noncompliance with Part 74 and the cost principles that resulted in the disallowance. Thus, the facts that CACHI has filed a civil suit against BHC in an Alabama Circuit Court and that a federal criminal case is pending against a BHC employee who apparently has pled guilty to charges that include fraud against CACHI and DHHS (*see* Plea Agreement) are simply not relevant to our decision. In short, while CACHI may seek relief from BHC in private litigation, CACHI remains responsible for the commitments it made in accepting federal grant funds.

Moreover, what CACHI is seeking is in the nature of equitable relief, which the Board lacks authority to grant. *E.g. Puerto Rico Dep't of Health, DAB No. 2385, at 29 (2011).*

**Conclusion**

For the reasons stated above, we uphold the \$144,611 and \$40,028 disallowances taken by HRSA against CACHI.

\_\_\_\_\_/s/  
Leslie A. Sussan

\_\_\_\_\_/s/  
Susan S. Yim

\_\_\_\_\_/s/  
Sheila Ann Hegy  
Presiding Board Member