

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Community Action Partnership of Western Nebraska
Docket No. A-13-20
Decision No. 2537
September 23, 2013

DECISION

Community Action Partnership of Western Nebraska (CAPWN), a Head Start grantee, appeals in part a determination by the Administration for Children and Families (ACF) disallowing \$204,869.52 in federal Head Start funding CAPWN claimed for the program years ending October 31, 2010 and October 31, 2011. Of that amount, CAPWN appeals the disallowance of \$172,399.52 — \$80,917.32 for the year ending October 31, 2010 and \$91,482.20 for the following year.

For the reasons explained below, we sustain the disallowance.

Legal Background

Head Start grantees must comply with regulations specific to the Head Start program and with regulations at 45 C.F.R. Part 74 that contain the administrative requirements for all Department of Health and Human Services (HHS) grants to non-profit organizations. 45 C.F.R § 1301.10(a). In support of its determination ACF cited the following requirements from Part 74:

Unless inconsistent with statutory program purposes, cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

45 C.F.R. § 74.22(b)(2).

Where a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding

period and any pre-award costs authorized by the HHS awarding agency pursuant to § 74.25(d)(1).

45 C.F.R. § 74.28.¹

Part 74 also incorporates the cost principles for determining allowable costs under awards to non-profit grantees at 2 C.F.R. Part 230. 45 C.F.R § 74.27(a). Under the cost principles, to be “allowable” under an award, costs must, among other requirements, be adequately documented and allocable to the award. 2 C.F.R. Part 230, App. A, ¶¶ A.2.a, A.2.g. A cost is “allocable” if, among other requirements, it benefits the particular federal grant award to which it is charged and is charged to the grant in accordance with the relative benefits received. *Id.* at Att. A, ¶ A.4.

The Board has repeatedly held that, “under the applicable regulations and cost principles, a grantee bears the burden of documenting the existence and allowability of its expenditures of federal funds.” *Suitland Family & Life Dev. Corp.*, DAB No. 2326, at 2 (2010) (citation omitted); *see also Arlington Cmty. Action Program, Inc.*, DAB No. 2141, at 2 (2008) (citations omitted) (in appeals of disallowances, grantee “bears the burden of demonstrating the allowability and allocability of costs for which it received federal funding”); *N. Star Youth Servs., Inc.*, DAB No. 1884, at 5 (2003) (“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”).

Background and Arguments

ACF conducted an on-site monitoring review of CAPWN’s Head Start and Early Head Start programs September 19 through September 22, 2011. ACF Br. at 1. ACF states that it reviewed “drawdown reconciliation reports” for the period September through December 2010, in conjunction with corresponding “Head Start/Early Head Start payroll and payables ledgers, cash ledgers, payment request for drawdown forms submitted to the Payment Management System [PMS], and the bank statements reflecting the receipt of cash from PMS” and cash advances reported in the PMS system, and that these documents enabled ACF “to trace each cash drawdown to the related expenditures accounted for in [CAPWN’s] ledgers.” *Id.* at 2, citing ACF Ex. 1. Based on this review, ACF made the following determinations at issue in this appeal:

¹ The “funding period” is “the period of time when Federal funding is available for obligation by the recipient.” 45 C.F.R. § 74.2. CAPWN’s “funding/grant periods” were one year long and ran from November 1 to October 31 of the following year. ACF Ex. 6, at 2-4 (CAPWN Financial Status Reports). ACF also refers to these periods as program years. ACF Br. at 1.

- CAPWN on October 28, 2010 improperly drew down \$80,917.32, the remaining balance of its Head Start grant funds for the program year ending October 31, 2010 (program year 44 or “PY 44”), “without an actual immediate cash requirement in carrying out the purpose of the approved program” or “documentation to support an immediate cash need,” as required by 45 C.F.R. § 74.22(b)(2). CAPWN Ex. A (disallowance letter); ACF Br. at 2, 3. ACF states that “the drawdown reconciliation reports . . . did not account for this drawdown,” that receipt of the cash “was confirmed by a PMS request form and bank statement showing this exact amount of cash deposited into the CAPWN bank account,” and that during the on-site review, CAPWN’s fiscal officer “stated that this drawdown represented the remaining balance of the Head Start PY 44 funds.” ACF Br. at 2. ACF disallowed \$80,917.32, the amount of the drawdown.
- CAPWN improperly charged \$91,482.20 in payroll costs “incurred for the pay period ending October 31, 2010” (PY 44) to funds awarded for the next program year, ending October 31, 2011 (PY 45), in violation of the prohibition on shifting costs among funding periods at 45 C.F.R. § 74.28. CAPWN Ex. A; ACF Br. at 3. ACF disallowed \$91,482.20.²

In its notice of appeal, CAPWN stated that it had incurred unclaimed, allowable and allocable expenses in each of the two program years sufficient to offset the disallowed amounts and offered to provide documentation of those expenses to ACF. CAPWN Ex. B. The Board accordingly stayed the briefing process for ACF to review CAPWN’s documentation. ACF subsequently concluded that the documentation did not provide any basis for changing the disallowance. CAPWN then submitted its brief and additional documentation; ACF submitted its brief and supporting documentation, and CAPWN declined to file a reply brief.

Analysis

1. We sustain the disallowance of \$80,917.32 in PY 44 funds that CAPWN drew down on October 28, 2010.

CAPWN does not dispute ACF’s finding that CAPWN drew down \$80,917.32, the remainder of its Head Start grant funds for PY 44 ending October 31, 2010, on October 28, 2010. CAPWN asserts that at the time of the drawdown on October 28, 2010, it had more than \$80,917.32 in obligated but unpaid payroll expenses for the last two weeks of

² ACF also determined that CAPWN improperly claimed \$32,470 in PY 44 for rental costs for buildings it owned based on market rental value instead of on depreciation or a use allowance as required by the cost principles at 2 C.F.R. Part 230, Appendix B, ¶ 11.a. CAPWN Ex. A. CAPWN did not appeal that part of the disallowance.

October 2010 that it paid on November 10, 2010, in the beginning of PY 45. CAPWN Br. at 3-4. CAPWN states that “at the end of the business day on October 28, 2010, when [the] funds were drawn down from PMS, approximately ninety-percent (90%), or \$82,333.98, of CAPWN’s payroll expenses [of \$91,482.20] for the pay period from October 16, 2010, through October 31, 2010, were obligated.” *Id.* at 3. CAPWN cites a “Payroll Expense Allocations” spreadsheet reflecting the payment on November 10, 2010 of \$91,482.20 in salary expenses (salaries, taxes, benefits) under an account labeled “Child Care & Development” as showing that “CAPWN’s payroll expenses for the pay period of October 16, 2010 through October 31, 2010, equaled \$91,482.20.” *Id.* citing CAPWN Ex. F. CAPWN states that consistent with its practice of paying payrolls on the 10th and 25th of each month, it paid those payroll expenses on November 10, 2010, which “was as close as administratively feasible to the draw down on October 28, 2010.” *Id.* at 4.

CAPWN also asserts that the \$80,917.32 drawn down on October 28, 2010 “was appropriately used toward allowable costs.” CAPWN Br. at 4. CAPWN cites its 407-page “expanded general ledger” for “Head Start/Early Head Start Child Care Development” as showing that “all of the expenses for which CAPWN used grant funds to pay were allowable costs” that were “necessary and reasonable for the proper and efficient administration of the grant program, Head Start, for which grant funds were used.” *Id.* at 4, citing CAPWN Ex. G.

As explained below, the record does not support CAPWN’s contentions.

- a. *CAPWN has not demonstrated that it had “immediate cash requirements” for the \$80,917.32 it drew down on October 28, 2010 as required by 42 C.F.R. § 74.22(b)(2) or that it, in fact, used the funds for payroll expenses.*

We first note that the issue under the regulation governing cash advances is not whether it was administratively feasible for CAPWN to disburse the funds before November 10, but whether it was administratively feasible for CAPWN to wait to draw down the funds until closer to the date it expected to actually disburse the funds. CAPWN has provided no explanation of why it needed to draw down the funds almost two weeks in advance of the date on which it expected to make payments for the payroll expenses.

As ACF argues, moreover, CAPWN “does not claim that it actually used the drawn down funds for payroll expenses, only that there was an obligation of funds for payroll expenses in an amount greater than the drawn down amount.” ACF Br. at 4. CAPWN declined to submit a reply brief and did not respond to ACF’s arguments. CAPWN also provided no evidence that it in fact spent the \$80,917.32 drawn down on October 28, 2010 to make the final PY 44 payroll payment on November 10, 2010. Instead, as ACF notes, CAPWN admits that “on November 10, 2010, CAPWN used \$91,482.20 worth of funds from the 2011 grant year [PY 45] to pay the final payroll expense of the 2010 grant

year [PY 44].” CAPWN Br. at 5. CAPWN’s admission that it spent \$91,482.20 in PY 45 funds on November 10, 2010 for the last payroll of PY 44, which is the subject of the second part of the disallowance on appeal, seriously undermines CAPWN’s assertion that it drew down the \$80,917.32 to meet its payroll obligations. CAPWN’s failure to demonstrate that it used the funds it drew down on October 28, 2010 for the payroll expense paid on November 10, 2010 (or, as we discuss next, to establish what other use was made of those funds), means that CAPWN has not shown that its drawdowns of FY44 Head Start funds were “limited to the minimum amounts needed” as required by section 74.22(b)(2).

We also note that documents ACF submitted show that when CAPWN requested PY 45 funds to cover the payroll for the final pay period of PY 44 (for which CAPWN issued checks on November 10, 2010), CAPWN made the request through the PMS on November 9 (as part of a request for a total of \$126,556.75) and received the funds on November 10, a day later. ACF Ex. 7, at 4-6. This undercuts any suggestion by CAPWN that it needed to draw down the \$80,917.32 in October merely because it had payroll obligations for which it expected to make payments on November 10. Thus, we conclude that CAPWN has not shown that its drawdowns of FY44 Head Start funds were “timed to be in accordance with [its] actual, immediate cash requirements . . . in carrying out the purpose of the approved program or project,” as required by section 74.22(b)(2).

We also note that the drawdown of funds was not simply premature. Excerpts of the report of ACF’s on-site review state that during the on-site review, CAPWN’s fiscal officer “stated simply that he had drawn the Head Start balance of PY 44 available funds” in the amount of \$80,917.32. ACF Ex. 7, at 8. It thus appears that the timing and the amount of the drawdown were selected solely to provide CAPWN with access to all remaining PY 44 funds, rather than to meet a specific funding need.

We accordingly conclude that CAPWN violated 42 C.F.R. § 74.22(b)(2) when it drew down \$80,917.32 on October 28, 2010.

We note that violations of section 74.22(b)(2) (or of similar requirements in Treasury Department regulations at 31 C.F.R. Part 205) have generally resulted in disallowances of interest earned on the grant funds that were drawn down prematurely. *E.g.*, *W. Va. Div. of Vocational Rehab.*, DAB No. 869 (1987); *Ind. Univ.*, DAB No. 774 (1986); *Univ. of Kan. Med. Ctr.*, DAB No. 530 (1984). Here, we do not base our determination to sustain the disallowance of \$80,917.32 solely on CAPWN’s noncompliance with section 74.22(b)(2). As we conclude below, CAPWN also failed to document that it spent the \$80,917.32 on allowable and allocable costs of its Head Start program.

- b. *CAPWN has not met its burden of documenting that it spent the \$80,917.32 it drew down on October 28, 2010 on allowable and allocable charges to its Head Start grant for PY 44.*

CAPWN asserts on appeal that “[e]ach dollar of the \$80,917.32 draw down was appropriately used toward allowable costs.” CAPWN Br. at 4. ACF rejected this assertion on the ground that CAPWN “was unable to provide satisfactory supporting journal entries, general ledger information or substantive evidence to show that the \$80,917.32 was used in the Head Start programs” ACF Br. at 4. We agree with ACF, for the following reasons.

First, CAPWN does not dispute the on-site review finding that the drawdown “reconciliation reports” CAPWN provided did not account for the \$80,917.32 drawdown, which the reviewers discovered only by reviewing the advances reported in the PMS. ACF Ex. 7, at 8. The absence of any accounting for the drawdown in the reconciliation reports raises the possibility that either CAPWN may have intended to use the funds for purposes unrelated to its federal Head Start program or its accounting system was inadequate.

More importantly, the documentation CAPWN relies on does not substantiate its contention that it had other PY 44 expenditures to justify its drawdown of the full amount of Head Start funds awarded for that period. This documentation raises questions about CAPWN’s use of its PY 44 award, for the following reasons, among others:

- The financial records CAPWN submitted to account for its use of PY 44 funds reflect payments for payroll expenses on November 10, 2009. CAPWN Ex. G at 1-2. According to the payroll payment schedule CAPWN reports, these payments would have been for salaries and related expenses accrued in the prior program year, PY 43, ending October 31, 2009, which should have been allocated to that prior year and paid with PY 43 funds. *See* ACF Ex. 6, at 2-4 (CAPWN Financial Status Reports showing that CAPWN used accrual method of accounting). As ACF pointed out, this error would have caused an overstatement of Head Start expenditures for PY 44. ACF Ex. 7, at 11.
- CAPWN’s financial records include all expenditures in “Fund 2510 - Head Start/Early Head Start Child Care Development” and do not break down costs according to appropriation accounts for the various grants included, such as Head Start, Early Head Start and their respective Training and Technical Assistance (T&TA) awards. CAPWN Ex. G. CAPWN does not dispute the analysis of the ACF reviewers that it appears that CAPWN overspent some accounts and underspent others, without reporting unobligated balances. ACF Ex. 7, at 9-10.

We thus agree with ACF that CAPWN failed to document that it spent the \$80,917.32 in PY 44 Head Start funds it drew down on October 28, 2010 on costs that were allowable charges to Head Start funds for that year. Accordingly, we sustain the disallowance of \$80,917.32 in Head Start funds awarded for the grant funding year ending October 31, 2010 (PY 44).

2. We sustain the disallowance of \$91,482.20 in PY44 costs that CAPWN improperly charged to funds awarded for PY45.

CAPWN “acknowledged that it inappropriately drew down \$91,482.20 on November 10, 2010, from the 2010-2011 grant year [i.e., PY 45] for the payroll costs for the pay period ending October 31, 2010 [in PY 44].” CAPWN Br. at 2. CAPWN recognizes that “[a]ccording to 45 C.F.R. § 74.28, ‘where a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period’” *Id.* at 4. Based on section 74.28, and on the cost principles in 2 C.F.R. Part 230, the Board has explained that grant funds awarded for a specific program year may be used to pay for expenses from that year only, and not for expenses from a previous year (which should be charged to grant funds awarded for that previous year). *Cent. Piedmont Action Council, Inc.*, DAB No. 1916, at 3-4 (2004), citing *Seminole Nation of Okla.* DAB No. 1385 (1993). As we stated in *Central Piedmont*, “[g]rant expenditures incurred outside of the applicable budget periods are not allocable to awards for those budget periods, and this violation of the requirement of allocability is a basis for a disallowance.” *Id.* at 4.

CAPWN asserts that it “offset” its improper use of \$91,482.20 in PY 45 funds to pay expenses from PY 44 because it “used corporate money acquired by cashing out certain certificates of deposit owned by the program to pay the final payroll of grant year 2011 [PY 45], which equaled \$91,482.20.” CAPWN Br. at 5. CAPWN argues that “[b]y paying this payroll expense with corporate funds in 2011, CAPWN sufficiently offset the \$91,482.20 of payroll expenses that it paid in 2010 with 2011 grant funds.” *Id.* CAPWN cites the Board’s decision in *Central Piedmont*, where the Board “recognized that a grantee may reduce or offset a disallowance by documenting that it incurred unclaimed, allowable and allocable costs that it paid for with its own funds.” *Cent. Piedmont* at 7. “In effect,” the Board held, “a grantee may substitute, for unallowable costs charged to federal funds, allowable costs for which it did not claim federal funding.” *Id.* CAPWN argues that, based on *Central Piedmont*, the Board should “reverse ACF’s disallowance of \$91,482.20 as CAPWN used its own funds to pay 2011 grant year expenses in an amount sufficient to offset their use of 2011 grant year funds on 2010 expenses.” CAPWN Br. at 5.

Central Piedmont is not applicable because CAPWN, unlike the appellant in that case, failed to document that it spent \$91,482.20 of its own, non-federal funds on allowable Head Start program costs that were allocable to PY 45 and were not previously charged to federal funds. The grantee in *Central Piedmont* made this showing with respect to its disallowed costs by, among other things, submitting a 66-page spreadsheet listing its Head Start expenditures, including the date, the payee, the purpose, a check number where applicable, and an account classification number. *Cent. Piedmont* at 5-7, 10-11. Here, by contrast, CAPWN presented no such documentation of the costs it incurred during PY 45.

To make that showing, CAPWN would have to document other, allowable Head Start expenditures from PY 45 sufficient to account for the total amount of Head Start funds it drew down for that year, in order “to establish that any allowable Head Start expense it alleges was paid with [non-federal] funds, and that might offset the disallowance, was not previously charged to federal funds.” *Marie Detty Youth & Family Svcs. Ctr., Inc.*, DAB No. 2024, at 8 (2006); *see also Marie Detty* at 7 (in *Central Piedmont*, Board “reduced the disallowance because the grantee documented allowable Head Start expenditures that accounted for all of the federal funds that it drew down during the relevant time period,” whereas “Marie Detty, unlike the grantee in *Central Piedmont*, did not document that it incurred enough allowable and allocable Head Start expenditures to account for all of the federal funds that it drew down.”); *see also N. Cent. W. Va. Cmty. Action Ass’n, Inc.*, DAB No. 1604, at 1-2, 9-10 (1996) (sustaining disallowance where the grantee did not document that it incurred enough Head Start expenditures with its own funds to offset the disallowance).

Additionally, because Head Start grantees are generally required to pay at least 20% of the costs of their Head Start programs out of non-federal funds, “a grantee seeking to reduce a disallowance by identifying unclaimed costs would have to show that the unclaimed costs were distinct from and in addition to the required non-federal share.” *Cent. Piedmont* at 8; 42 U.S.C. § 9835(b); 45 C.F.R. § 1301.20. Thus, in *Central Piedmont*, “the record indicate[d] that [the grantee] provided its non-federal share through in-kind contributions” and “that the . . . Head Start costs [the grantee] reports having paid out of its own funds were not part of the 20% share of total approved costs that all Head Start grantees are required to pay with non-federal funds.” *Cent. Piedmont* at 8-9.

The only documentation CAPWN submitted concerning its PY 45 Head Start expenditures were posted general ledger transactions and “payroll expense allocations” reflecting the payment of \$91,482.20 in personnel expenses on November 10, 2010, and showing that, as of March 12, 2013, CAPWN had reversed the entries charging those costs to PY 45. CAPWN Exs. F; D at 5-7. CAPWN submitted no documents to show its total allocable Head Start expenses for PY 45, or the source of funds to pay those expenses. CAPWN moreover did not respond to and does not deny ACF’s reports that

“[d]espite being given ample opportunity to do so, CAPWN could not establish to ACF’s satisfaction that it offset in PY 45 the \$91,482.20 of PY 45 funds it used to pay PY 44 payroll expenses” and that CAPWN submitted “no evidence in support of this claim” to ACF. ACF Br. at 6.

Absent documentation sufficient to establish that CAPWN used non-federal funds to pay for \$91,482.20 in Head Start program expenses from PY 45 that were neither charged to federal funds nor part of CAPWN’s required non-federal share of Head Start costs, CAPWN failed to meet its burden, as a recipient of federal grant funds, of documenting the existence and allowability of its expenditures of federal funds. *See Beaver Cnty. Head Start*, DAB No. 2441, at 5 (2012) (grantee that failed to allege error in ACF’s disallowance determination failed to meet its burden of documenting the allowability of its expenditures of federal funds).

We thus sustain the disallowance of \$91,482.20 in Head Start funds awarded for the grant funding year ending October 31, 2011 (PY 45).

Conclusion

For the reasons discussed, we sustain the disallowance in full.

_____/s/
Stephen M. Godek

_____/s/
Leslie A. Sussan

_____/s/
Judith A. Ballard
Presiding Board Member