

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

Bright Beginnings for Kittitas County  
Docket No. A-14-113  
Decision No. 2608  
December 18, 2014

**DECISION**

Appellant Bright Beginnings for Kittitas County (Bright Beginnings), a Head Start grantee, filed a Notice of Appeal (NA) in this matter on September 10, 2014. The appeal seeks review of a final decision by the Administration for Children and Families (ACF) to disallow \$11,214.84 in Head Start grant funds based on findings in the Office of Head Start (OHS) monitoring report (report) issued April 23, 2013. ACF disallowed the funds based on the report's finding that Bright Beginnings, in violation of 45 C.F.R. § 74.28, charged to the program year ending December 31, 2012 four non-personnel transactions for which it did not incur obligations until the program year ending December 31, 2013. Bright Beginnings admits in its NA that although the purchase orders for the four transactions were completed prior to December 31, 2012, those orders were not actually submitted to vendors and paid until 2013. NA at 4 (unnumbered). Bright Beginnings also acknowledges that it was aware it "could not spend monies intended for the FY2012 operation of the program on expenses incurred in FY2013."<sup>1</sup> *Id.* at 3. Bright Beginnings asserts, however, that it was "not clear on the process or what the term 'obligating funds' meant" and that it was operating "under the belief that because the purchase orders were completed prior to December 31, 2012 they complied with [Federal cost] requirements." *Id.* at 3-4. Bright Beginnings also states, "Our program did not willfully intend to disregard C.F.R. 74.28 . . .," *id.* at 1, and makes arguments in equity. For the reasons stated below, we uphold the disallowance.

**Applicable Law**

The Head Start Act authorizes funding for the Head Start program to provide comprehensive developmental services to preschool children as well as to infants and toddlers, the latter through the Early Head Start program; both programs serve primarily low-income children. 42 U.S.C. §§ 9833 and 9840a. Compliance with the administrative

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<sup>1</sup> Although Bright Beginnings uses the terms "FY2012" and "FY2013", there is no dispute that these terms correspond to the budget periods for which the awards were made and that "program year" refers to the same 2012 and 2013 periods.

requirements in Part 74 of the Code of Federal Regulations is a term and condition of Head Start grant awards. 45 C.F.R. § 1301.10(a). Among the administrative requirements are the financial and management requirements in 45 C.F.R. §§ 74.20-74.28. Section 74.28 addresses the “Period of availability of funds” as follows:

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

Section 74.2 defines “obligations” to mean “the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.” If a grantee “materially fails to comply with the terms and conditions of an award,” ACF “may . . . [d]isallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.” 45 C.F.R. § 74.62(a)(2).

## **Factual Background**

### **A. The Grant Awards and Review Findings**

Bright Beginnings operates Head Start and Early Head Start programs under federal grant awards. Bright Beginnings applied for and received non-competing continuation grant awards in 2012 and 2013. ACF Exs. 5, 6. Each Notice of Award (NOA) specified a one-year budget period of January 1 through December 31 for that award year. *Id.* During March 3-8, 2013, ACF conducted a monitoring review of Bright Beginnings’ Head Start and Early Head Start programs and reported the results to Bright Beginnings in an Overview of Findings (Overview). ACF Ex. 3. ACF found Bright Beginnings out of compliance with multiple Head Start performance standards, laws, regulations and policy requirements based on the information gathered during the review. *Id.* As relevant to this appeal, the findings included noncompliance with 45 C.F.R. § 74.28 based on Bright Beginnings’ charging to the program year ending December 31, 2012 four non-personnel transactions, the obligations for which were incurred during the program year ending December 31, 2013. *Id.* at 3-4. The Overview advised Bright Beginnings that ACF would determine whether a disallowance was appropriate based on these findings. *Id.* at 4.

The first transaction identified in the findings of noncompliance with section 74.28 involved a payment of \$1,904.90 to the National Association for the Education of Young Children for the costs of language and development training materials. *Id.* The documentation Bright Beginnings had for these costs consisted of an undated purchase order as well as a sales order and a back-order statement, both of which bore the date February 12, 2013. *Id.* The second transaction involved a \$3,303.61 payment to Tuff Shed, Inc., for a storage shed. *Id.* Once again, the purchase order was undated. In

addition to the undated purchase order, the available documentation included a sales quote, a sales order and a VISA debit card receipt for a telephone order, all of which were dated February 19, 2013. *Id.* The third transaction involved a payment to Lakeshore Learning for \$1,059.19 worth of classroom supplies. The supporting documentation consisted of a purchase order dated December 17, 2012, a summary of the order showing an order date of February 11, 2013 and a packing list dated February 12, 2013. *Id.* The fourth transaction involved a purchase of playground equipment from Strictly for Kids at a cost of \$4,947.14. *Id.* The documentation consisted of a purchase order dated December 20, 2012, a vendor invoice dated January 29, 2013 and a delivery receipt showing a picked-up date of February 19, 2013. *Id.* Bright Beginnings' Fiscal Officer, interviewed during the review, confirmed that the costs identified during the review were all charged to a period outside the award period in which the obligations were incurred. *Id.*

By letter dated August 11, 2014, ACF notified Bright Beginnings that it was taking a disallowance in the amount of \$11, 214.84. ACF Ex. 2.

#### B. Procedural History of Appeal

Bright Beginnings filed a timely NA, using the DAB E-File system. On September 16, 2014, the Board sent to the parties by DAB E-File an Acknowledgment of Notice of Appeal (Acknowledgment). The Acknowledgment notified the parties that because the amount in dispute was less than \$25,000, and absent any objection, the Board would decide the appeal using the expedited procedures set out at 45 C.F.R. § 16.12. Acknowledgment at 2. Neither party objected to using the expedited procedures. The Acknowledgment instructed the parties to submit their arguments and supporting documents, as described in section 16.12(c)(1), by DAB E-File to the Board and each other within 30 days of receiving the Acknowledgment.<sup>2</sup> *Id.* The Board also instructed Bright Beginnings as follows:

[Bright Beginnings] should notify the Board and the respondent within that period if it wishes to rely on its six-page [NA] instead of submitting additional arguments. If [Bright Beginnings] chooses to do so, however, it should still submit any documentation it believes supports its appeal.

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<sup>2</sup> Section 16.12(c)(1) states: "Within 30 days after receiving the Board's acknowledgment of the appeal . . . each party shall submit to the Board and the other party any relevant background documents . . . with a cover letter . . . containing any arguments the party wishes to make."

*Id.* Finally, the Acknowledgment stated that after the time for briefing had expired, the Board would schedule a phone conference “to receive the parties’ comments in response to each other’s submissions” and would notify the parties “if it determines that additional procedures are required.” *Id.*, citing 45 C.F.R. § 16.12(c)(2).

On September 29, 2014, ACF moved to consolidate this appeal with another appeal filed by Bright Beginnings and docketed as *Bright Beginnings for Kittitas County*, Docket No. A-14-118. By email dated September 30, 2014, the Board gave Bright Beginnings one week to respond to the motion.<sup>3</sup> On October 15, 2014, counsel for ACF emailed the Board staff attorney assigned to this appeal to inquire about the status of ACF’s motion to consolidate in light of the fact that ACF’s submission pursuant to section 16.12(c)(1) was due the next day, October 16, 2014. In an email dated October 15, 2014, addressed to both parties, the staff attorney stated that the Presiding Board Member had not yet ruled on the motion and that the parties could make their submissions as scheduled or could await the ruling on the motion to consolidate before filing those submissions. The email further noted that Bright Beginnings had not commented on the motion to consolidate.

On October 16, 2014, the Board issued a “Ruling Denying Motion to Consolidate & Granting Extension of Time to Submit Briefs.” The Ruling stated that the motion was being denied because the Board was not persuaded that consolidation would lead to more efficient adjudication since the bases for the disallowances differed, the disallowances involved different claimed costs and one of the appeals was subject to the expedited procedures while the other was not. Addressing ACF’s assertion of possible overlap in witness testimony, the Ruling further stated that “the information presently before the Board does not indicate that an in-person, evidentiary hearing will be required to resolve the issues in each appeal.” Ruling at 1, citing 45 C.F.R. § 16.4. Finally, the Ruling granted the parties a one-week extension of time, until October 23, 2014, to submit their arguments and supporting documents pursuant to 45 C.F.R. § 16.12(c)(1).

On October 23, 2014, ACF filed Respondent’s Brief in Support of Disallowance (ACF Response) and six exhibits together with an ACF Exhibit Index. Bright Beginnings filed no brief or supporting documents. In an email dated November 20, 2014 (sent in response to questions from the staff attorney about the status of Bright Beginnings’ filings to date and possible dates for a phone conference), Bright Beginnings stated that “after conferring with our [Board of Directors] Chair it was decided that at this time Bright Beginnings has no further additions or admissions to submit in regard to this appeal. It is our understanding that since no further action in regards to the appeal is desired on our part a conference call is not necessary[.]” In an email response of the same date, the staff attorney stated that the “purpose of the phone conference would be

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<sup>3</sup> All correspondence by email, like all other documents related to this appeal, has been uploaded to DAB E-File.

for [Bright Beginnings] to state any response it might have to what ACF said in its brief in this expedited appeal . . .” and asked Bright Beginnings to clarify whether its email meant that Bright Beginnings “does not wish to state any such response,” in which case the phone conference would not be necessary. By email dated November 21, 2014, Bright Beginnings’ representative stated, “I have confirmed with the [Board of Directors] chair that they do not want to respond to the brief.”

Given this procedural history, the Board has determined it is appropriate to proceed to decision in this case based solely on Bright Beginnings’ NA and the ACF Response and Exhibits.

## Discussion

### A. Bright Beginnings’ alleged lack of intent to violate section 74.28 is not a basis for overturning the disallowance.

The grants administration regulation at issue provides as follows:

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

45 C.F.R. § 74.28. The regulations define “obligations” as “the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.” 45 C.F.R. § 74.2. During the monitoring review ACF found, and Bright Beginnings admits, that orders for the four non-personnel transactions charged to budget year 2012 were not actually submitted to vendors or paid until budget year 2013. Applying the definition of “obligations” quoted above, this means that the funds for the transactions charged to program year 2012 were not actually obligated until program year 2013. This is a clear violation of the plain language of section 74.28. *See also River East Economic Revitalization Corp.*, DAB No. 2087, at 6 (“The fact that expenditures are incurred outside their grant periods necessarily means that they are not allocable to the grants and is a sufficient basis in itself for a disallowance.”); *Delta Found., Inc.*, DAB No. 1710, at 41 (1999), *aff’d*, 303 F.3d 551, 568-570 (5<sup>th</sup> Cir. 2002)(“The fact that these expenditures were incurred outside their respective grant periods necessarily means that these expenditures were not allocable to the grants and is a sufficient basis in itself for a disallowance.”), citing *Bedford Stuyvesant Restoration Corp.*, DAB No. 1404, at 15 (1993).

Bright Beginnings, as noted, states that it “did not willfully intend to disregard C.F.R. 74.28 . . .,” but that its staff did not understand the meaning of “obligated” and thought that creating the purchase orders in December 2012 was sufficient to obligate the funds for those purchases even though the orders were not sent to vendors until 2013. NA at 4.

Even assuming Bright Beginnings violated the regulation due to misunderstanding its terms rather than intentional conduct, this is not a basis for overturning the disallowance.

The Board has consistently held “that it is a fundamental principle of grants management that a grantee is required to document its costs, and bears the burden of demonstrating the allowability and allocability of costs for which it received federal funding.” *Marie Detty Youth & Family Servs. Ctr., Inc.*, DAB No. 2024, at 3 (2006). Applying that principle here, the only issue is whether Bright Beginnings has shown that it charged the non-personnel transaction costs at issue to the program year in which it incurred the obligation for those costs, as required by section 74.28. Section 74.28 states no intent element, and the regulations do not otherwise provide that where, as here, a grantee charges costs to a budget period outside the period in which it incurred the obligations for those costs, a disallowance is appropriate only if the grantee intended this violation of the regulation. Thus, whether Bright Beginnings’ staff intended to violate section 74.28 is irrelevant.

With respect to the alleged misunderstanding of its staff about the meaning of the term “obligations”, we further note that as a Head Start grantee, Bright Beginnings is responsible for knowing the legal requirements governing its use of the federal grant funds it receives to operate its Head Start and Early Head Start programs. *See John Hartman, D.O.*, Decision No. 2564, at 3 (2014) (“In general, persons ‘who deal with the government are expected to know the law . . . .’”), quoting *Heckler v. Cmty. Health Servs. of Crawford County, Inc.*, 467 U.S. 51, 63 (1984). The grant awards for program years 2012 and 2013 notified Bright Beginnings that the requirements in 45 C.F.R. Part 74 were among the terms and conditions of those awards. ACF Exs. 5, 6. They also notified Bright Beginnings of the beginning and ending dates of the budget period for each award which coincided with the beginning and ending dates of the calendar year in each case. *Id.* Bright Beginnings does not explain how it could reasonably have thought that the definition of “obligations” in section 74.2 allowed it to incur obligations simply by drafting purchase orders. With respect to purchases made with grant funds, the definition plainly states that “obligations” include “the amounts of orders placed . . . .” 45 C.F.R. § 74.2. It is clear from the underscored language that merely drafting a purchase order to be placed at some future date is not sufficient to obligate the funds that will be used to pay for the ordered goods or services.

In summary, Bright Beginnings’ admission that it did not place the orders for the four non-personnel transactions until January and February of 2013 even though it charged these transactions to its program year 2012 grant is sufficient to uphold the disallowance for noncompliance with section 74.28. Whether Bright Beginnings intended that noncompliance or its staff misunderstood what that regulation required is irrelevant.

B. Bright Beginnings' arguments in equity provide no basis for overturning the disallowance.

Bright Beginnings makes a number of arguments that amount to requests for an equitable waiver of the disallowance. Bright Beginnings asks that the Board take into consideration the role that staff changes, financial concerns and lack of staff training played in its acknowledged "failure to obligate the funds in the correct manner." NA at 1, 2, 6. Bright Beginnings also asserts that the "funds were spent on items that if obligated during FY2012 would not have been questioned in regards to whether the purchases were reasonable, allocable and allowable costs in the operation of the program" and that they were purchased as part of a "wish list" put together in light of a projected surplus of funds for the 2012 program year. *Id.* at 1, 3. Bright Beginnings also cites its "proactive response to prevent future findings or deficiencies." *Id.* at 4. The Board has consistently held that it "has no authority to waive a disallowance based on equitable principles." *Municipality of Santa Isabel*, DAB No. 2230, at 11 (2009); *accord Bedford Stuyvesant Restoration Corporation*, DAB No. 1404, at 20 (citing 45 C.F.R. § 16.14 and stating that the Board "is bound by all applicable law and regulations" and "cannot provide equitable relief"). As discussed above, the regulations here clearly authorized ACF to disallow the costs of the four non-personnel transactions charged to Bright Beginnings' 2012 program year since the obligations for those costs were not incurred until the 2013 program year. Accordingly, we reject Bright Beginnings' arguments for equitable relief from the lawfully taken disallowance.

**Conclusion**

For the reasons stated above, we uphold the disallowance of \$11,214.84 in federal grant funds awarded to Bright Beginnings.

/s/

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Constance B. Tobias

/s/

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Leslie A. Sussan

/s/

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Sheila Ann Hegy  
Presiding Board Member