Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Rhode Island Department of Human Services
Docket No. A-13-95
Decision No. 2552
December 20, 2013

DECISION

The Rhode Island Department of Human Services (Rhode Island) appeals a determination by the Administration for Children and Families (ACF) to impose a $1,718,610 penalty in the form of a reduction in federal funding to Rhode Island for fiscal year (FY) 2014 under the Temporary Assistance for Needy Families (TANF) program. The penalty is based on Rhode Island's failure to participate in the Income Eligibility and Verification System (IEVS) to determine eligibility for the TANF program. For the reasons explained below, we uphold ACF's penalty determination.

Applicable Law

The TANF program, Title IV-A of the Social Security Act (Act), 42 U.S.C. §§ 601-619, provides grants to eligible states with approved programs to assist needy families that have children, and to provide parents with job preparation and support services to enable them to become self-sufficient. Each state that submits a state plan outlining how it will conduct the program and making certain certifications is eligible for an annual State Family Assistance Grant (SFAG).

In order to participate in several federal programs, including TANF, a state must "have in effect an income eligibility and verification system which meets" certain requirements. Act § 1137, 42 U.S.C. § 1320b-7. Those requirements are described in section 1137(d) of the Act and the implementing regulations at 45 C.F.R. §§ 205.51-205.60. Through their IEVS systems, states exchange wage, benefit, and other income data on aid recipients and applicants with other federally assisted benefit programs. States then use the information exchanged to determine whether individuals are eligible for TANF assistance (and other benefits) and the amount of assistance that they may receive. *See* ACF Ex. 5, at 3 (audit report describing IEVS).

A state that fails to "participate" in IEVS, i.e., that fails to meet the IEVS requirements, may be penalized up to two percent of its adjusted SFAG in the next fiscal year, unless the state demonstrates that it had "reasonable cause" for its failure. Act § 409(a)(4), (b);

45 C.F.R. §§ 262.1(a)(5), (c)(1); 262.4(c); 262.5. Prior to imposing a penalty on a state that does not claim or demonstrate reasonable cause for its failure, ACF must afford the state an opportunity to correct the failure through a corrective compliance plan the state submits for ACF's approval. 45 C.F.R. § 262.6. ACF will impose the penalty if the state fails to submit an approvable corrective compliance plan or fails to completely correct or discontinue the violation within the period covered by an approved plan. *Id.* § 262.6(h), (i). ACF has the discretion to reduce the penalty imposed on a state that fails to completely correct or discontinue the violation if the state demonstrates that it made "significant progress towards correcting or discontinuing the violation," or that its failure to fully correct or discontinue the violation "was attributable to either a natural disaster or regional recession." *Id.* § 262.6(j).

A state may appeal ACF's determination to impose a penalty to the Board within 60 days after receiving notice from ACF. Act § 410(b)(1); 45 C.F.R. § 262.7(b)(1).

Background

By letter dated June 1, 2005, ACF informed Rhode Island that, based on the state's single audit report[1] covering the period July 1, 2002 through June 30, 2003 (FY 2003), Rhode Island was subject to a penalty of $1,718,610, two percent of its adjusted SFAG for FY 2003, because Rhode Island "failed to participate in [IEVS] to verify income in determining eligibility for the [TANF] program as required." ACF Ex. 4, at 1. ACF explained that the audit report "disclose[d] several instances where discrepancies resulting from IEVS data matches had not been properly investigated or resolved and thus, may have had an impact in determining TANF eligibility and benefit amounts." *Id.* In addition, the report noted that Rhode Island's "management acknowledged that IEVS interface discrepancies are not always resolved promptly due to various factors." *Id.* Rhode Island disputed ACF's finding, challenging the audit methodology and arguing that the auditor's findings did not establish that Rhode Island had failed to participate in IEVS, but ACF rejected Rhode Island's arguments. *See* ACF Ex. 2. Rhode Island then submitted a corrective compliance plan outlining actions it "plan[ned] to implement between December 1, 2005, and May 31, 2006 to improve its performance . . . ." Rhode Island (RI) Ex. 2, at 1st p. (unnumbered).

[1] The Single Audit Act requires a non-federal entity (such as a state government) that spends more than $500,000 in federal grant funds during a fiscal year to conduct a single, comprehensive financial and compliance audit of its programs for that year. *See* 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); OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Each federal agency that makes a grant to the entity must review the single audit findings and determine whether prompt and appropriate action has been taken to correct problems identified by the audit. 31 U.S.C. § 7502(f)(1)(B).

ACF informed Rhode Island by letter dated March 1, 2006 that it had accepted Rhode Island's corrective compliance plan "with the understanding that [Rhode Island] commits to an end goal of achieving compliance by May 31, 2006." ACF Ex. 3, at 1. ACF explained that it would not impose a penalty against Rhode Island for failing to participate in IEVS if Rhode Island "completely corrects the violation within the period covered by the plan." *Id.* ACF also stated that it would "use the single audit for the period July 1, 2006 through June 30, 2007" (FY 2007) to determine whether Rhode Island had achieved compliance. *Id.*

By letter dated May 20, 2013, ACF notified Rhode Island that, after reviewing the State's single audit report for FY 2007, ACF had "determined that IEVS deficiencies still exist." ACF Ex. 1, at 1. ACF therefore determined that Rhode Island "remains subject to the IEVS penalty [for FY 2003] because it did not fully correct and discontinue the violation that led to the IEVS penalty by May 31, 2006 – the deadline set forth" in Rhode Island's corrective compliance plan. *Id.* at 2. ACF explained that it would impose the $1,718,610 penalty by reducing Rhode Island's SFAG for FY 2014. *Id.*

Rhode Island timely appealed ACF's determination to the Board. Rhode Island argues that there is no basis for imposing a penalty. In the alternative, Rhode Island argues that the Board should waive or reduce the penalty and accumulated interest based on the "remoteness in time" of ACF's penalty determination from the date the FY 2007 single audit report came out or based on events that transpired in between.

Analysis

1. ACF was authorized to impose a penalty on Rhode Island because Rhode Island failed to participate in IEVS during FY 2003 and failed to completely correct or discontinue the violation within the period covered by its corrective compliance plan.

The FY 2003 audit establishes that Rhode Island did not "participate" in IEVS for FY 2003 because it did not meet the IEVS requirements during that period. Among other requirements, a state must use IEVS to "review and compare the information obtained from each data exchange against information contained in the case record to determine whether it affects the applicant's or the recipient's eligibility or the amount of assistance." 45 C.F.R. § 205.56(a)(1). In addition, a state must "keep individual records which contain pertinent facts about each applicant and recipient," including "facts essential to the determination of initial and continuing eligibility." *Id.* § 205.60(a). Yet, in 15 out of 60 sample cases reviewed by the auditors for FY 2003 where a household appeared to be TANF eligible, Rhode Island's IEVS identified some kind of data

discrepancy but Rhode Island failed to investigate that discrepancy. ACF Ex. 5, at 3-4. In nine of those 15 cases, the discrepancy appeared to impact the household's eligibility or benefit level. *Id.* at 4. Moreover, in 11 of the 60 sample cases, Rhode Island failed to maintain documentation supporting caseworkers' resolution of data discrepancies that appeared to impact households' eligibility or benefit level. *Id.*

The FY 2007 audit shows that Rhode Island did not fully correct or discontinue its violation of the IEVS requirements by May 31, 2006 in accordance with its approved corrective compliance plan. In fact, Rhode Island's single audit report for FY 2007 identified the same types of IEVS problems as its report for FY 2003. In 20 out of 40 sample cases reviewed by the auditors for FY 2007 where a household received TANF benefits, Rhode Island's IEVS identified some kind of data discrepancy but Rhode Island failed to investigate or resolve the discrepancy. ACF Ex. 9, at 3. In 13 of those 20 cases, the auditors determined that the discrepancy may have impacted the household's eligibility or benefit level. In addition, in eight of the 40 sample cases Rhode Island failed to maintain documentation supporting caseworkers' resolution of data discrepancies that may have impacted households' eligibility or benefit level. *Id.*

Rhode Island does not dispute these audit findings and acknowledges that the audit results indicate that its "adherence to the . . . procedures was not perfect . . . ." RI Br. at 2. Nonetheless, Rhode Island asserts that there was insufficient information to determine whether the audit methodology was reliable, so ACF erred in relying on the audit reports as a basis for imposing the penalty. *Id.* at 2-3, 5-6.

We reject Rhode Island's contention. Rhode Island's Office of the Auditor General conducted the audits and created the single audit reports relied on by ACF. A state as a whole must be viewed as a single unit responsible for the administration of federal grant programs and funds, so Rhode Island was responsible for the audits it now questions and had access to the details of the audit methodology. *See Ala. Dep't of Human Res.*, DAB No. 1989, at 22 (2005); 45 C.F.R. § 92.3 (defining "grantee" as "the government to which a grant is awarded" and explaining that the grantee "is the entire legal entity even if only a particular component of the entity is designated in the grant award document"). States are required to ensure that their single audits are "properly performed" (*see* OMB Circular A-133, § ___.300(e)), but Rhode Island did not provide any evidence suggesting that it disregarded this responsibility and conducted the audits in a manner that would render the results unreliable. Accordingly, we conclude that the FY 2003 and 2007 audit reports are reliable evidence that Rhode Island failed to adequately participate in IEVS during FY 2003 and failed to correct its IEVS violations by May 31, 2006 in accordance with its approved corrective compliance plan.

Rhode Island also argues that it "substantially complied" with the IEVS requirements and that substantial compliance is sufficient to constitute participation in IEVS and to avoid the imposition of a penalty. According to Rhode Island, the auditors found only "13 discrepancies of note" in the FY 2007 audit, so it "complied with the IEVS requirements in 67.5% of the cases in the sample," a percentage it says is "well within the range" of substantial compliance standards adopted by agencies and courts in other contexts. RI Br. at 3-5. Rhode Island further stresses that "several of the errors assessed by the auditors are technical errors that did not [a]ffect the eligibility of any recipient or applicant for [TANF] benefits," so imposing a penalty would not further the IEVS requirements' purpose of "improv[ing] the accuracy of eligibility determinations." *Id.* at 5.

Substantial compliance with the TANF IEVS requirements is insufficient to avoid the imposition of a penalty, however. Neither the statute nor the applicable regulations provide that substantial compliance with the requirements constitutes "participation" in IEVS. The statute provides that if the Secretary of Health and Human Services (Secretary) –

> determines that a State program funded under this part is not participating during a fiscal year in the income and eligibility verification system required by section 1137, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not more than 2 percent of the State family assistance grant.

Act § 409(a)(4). Nothing in this text allows the Secretary to waive or reduce the penalty based on substantial compliance. In addition, neither section 1137(d) of the Act nor the implementing regulations at 45 C.F.R. §§ 205.51-205.60, which address what it means to "participate" in IEVS, allow for substantial compliance with the requirements. The Act and the applicable regulations likewise do not excuse "technical" violations of the IEVS requirements. Thus, even if we accepted Rhode Island's assertion that most of its violations were "technical" and that 67.5% compliance is "substantial compliance," that would not help Rhode Island here.

Rhode Island further asserts that there is no basis for imposing a penalty because in its approved corrective compliance plan it promised only to "improve" its performance and "reduce" the number of IEVS discrepancies and did not offer a date by which its IEVS violations would be fully corrected or discontinued. RI Br. at 6-7, 11. However, under the regulations a corrective compliance plan must include the both a "detailed description of how the State will <u>correct or discontinue</u> . . . the violation" and the "time period in which the violation will be corrected or discontinued." 45 C.F.R. § 262.6(d)(2), (3) (emphasis added). As the Secretary stated in the preamble to the final rule, a "State's timely correction of a problem is critical to assuring that the State is not subject to a subsequent penalty." 64 Fed. Reg. 17,720, 17,805 (Apr. 12, 1999). ACF specifically

explained in its letter accepting Rhode Island's corrective compliance plan that it was doing so "with the understanding that [Rhode Island] commits to an end goal of achieving compliance by May 31, 2006," the end date Rhode Island offered in its plan for implementing the corrective actions that it proposed to take. ACF Ex. 3, at 1; RI Ex. 2, at 1st p. (unnumbered). Consistent with the regulations, ACF also explained that it would impose a penalty unless Rhode Island "completely corrects the violation within the period covered by the plan." ACF Ex. 3, at 1; *see* 45 C.F.R. § 262.6(i). Thus, Rhode Island was on notice – and did not object – that it needed to completely correct its violation of the IEVS requirements by May 31, 2006, and that failure to do so would result in ACF imposing a penalty.

Rhode Island also speculates that some of the data discrepancies identified in the audit reports might have been resolved by caseworkers in a timely fashion. In addition, Rhode Island asserts that "none of the IEVS regulations require caseworkers to include supporting documentation whenever they clear a discrepancy," so such "errors are not . . . an appropriate basis for a penalty determination." RI Br. at 5-6.

Rhode Island's arguments are unsupported by any evidence and otherwise lack merit. Whether caseworkers resolved some of the data discrepancies identified in the audit reports in a timely fashion is immaterial. The auditors found that in a number of cases where caseworkers resolved discrepancies that appeared to impact households' eligibility or benefit level, the caseworkers failed to document the rationale behind the resolution. Contrary to Rhode Island's contention, this failure violated the regulations and so provided a basis for imposing a penalty. By not documenting why they "cleared" these data discrepancies, the caseworkers failed to maintain "records which contain pertinent facts about each applicant and recipient," including "facts essential to the determination of initial and continuing eligibility" as required under section 205.60(a) of the regulations. In any event, the auditors also found that in a number of cases caseworkers did not even investigate data discrepancies, which is also a violation of the regulations. *See* 45 C.F.R. § 205.56(a)(1).

Because Rhode Island's FY 2003 single audit report reliably establishes that Rhode Island did not meet the IEVS requirements and because Rhode Island's FY 2007 single audit report reliably establishes that Rhode Island did not fully correct its violation of those requirements within the time frame specified in its corrective compliance plan, ACF was authorized to impose a penalty.

2. There is no basis for overturning or reducing the authorized penalty and accumulated interest.

Rhode Island asserts that it was "disadvantaged" by the fact that ACF did not assess the penalty until May 2013, several years after the audit report for FY 2007 was issued.[2] RI Br. at 12. Rhode Island argues that, given this delay, the Board should consider events that took place during the intervening period, which Rhode Island contends provide a basis for overturning or reducing the penalty. *Id.* at 12-15. Specifically, Rhode Island asserts that it experienced an extended economic downturn from calendar years 2008 to 2012, during which its unemployment rate was one of the highest in the nation. Rhode Island also argues that between March 2010 and February 2013 it was hit by a series of natural disasters. In addition, Rhode Island maintains that during the intervening period it "continued . . . to work on the issues that are the subject of the penalty." *Id.* at 14.

As noted above, under the regulations, the penalty imposed on a state that "fails to completely correct or discontinue the violation pursuant to its corrective compliance plan and in a timely manner" may be reduced, under limited circumstances. 45 C.F.R. § 262.6(j). To be eligible for a penalty reduction, the state "must demonstrate" that, "[a]though it did not achieve full compliance," it made "significant progress towards correcting or discontinuing the violation," or that its failure to fully correct or discontinue the violation "was attributable to either a natural disaster or regional recession." *Id.* As the preamble to the final rule indicates, section 262.6(j) reflects the wording of section 409(c) of the Act. 64 Fed. Reg. at 17,805-06. Section 409(c)(3) of the Act provides that the "Secretary shall assess some or all of a penalty . . . if the State does not, in a timely manner, correct or discontinue, as appropriate, the violation pursuant to a State corrective compliance plan accepted by the Secretary." (Emphasis added.) Thus, the statute permits the Secretary to reduce the penalty, but not to waive it. *See Neb. Dep't of Health & Human Servs.*, DAB No. 2413, at 5 (2011).

To the extent Rhode Island argues that it has fulfilled the requirements of section 262.6(j), Rhode Island's arguments are unavailing because Rhode Island did not make the requisite demonstration. Section 262.6(j) permits reduction of a penalty based on progress and events that occurred within the time period covered by a corrective compliance plan, not after it. If the relevant time period were not limited to the compliance deadline provided in a state's plan, there would be no reason to focus on

[2] The date on which the FY 2007 single audit report was released is unclear. The record contains a letter from Rhode Island's Auditor General dated May 23, 2008 submitting the report to the State's General Assembly, but Rhode Island says in its briefing that the report was issued on August 21, 2009. *Compare* ACF Ex. 9, at 1 (letter dated May 23, 2008) *with* RI Br. at 12; RI Reply Br. at 2 (citing date of August 21, 2009). In any event, the exact timing of the release of the report is irrelevant because, as we explain below, we reject Rhode Island's contention that the delay between the report's issuance and ACF's penalty determination provides a basis for reducing the penalty or accumulated interest.

whether the state made "significant progress" towards correcting or discontinuing the violation or on whether the state's failure to fully correct or discontinue the violation was attributable to particular events. Thus, the Board has previously pointed out that a state's progress in correcting or discontinuing a violation of the TANF requirements that occurred after the compliance deadline in the state's corrective compliance plan is "not relevant." *Neb. Dep't of Health & Human Servs.*, DAB No. 2413, at 4.

Although Rhode Island argues that ACF was "unreasonably late" in making its penalty determination and that Rhode Island was prejudiced by the delay (RI Reply Br. at 2), neither the statute nor the regulations impose a time frame in which ACF must decide to impose a penalty. The regulations do provide that ACF will formally notify a state of its decision to impose a penalty within five days after ACF makes this determination. 45 C.F.R. § 262.7(a)(1). However, ACF provided unrefuted evidence that it did not decide to impose a penalty on Rhode Island until May 17, 2013 and that it notified Rhode Island that same day. *See* ACF Ex. 10, at 2 (declaration of Earl Johnson). We also note that some delay between the issuance of the 2007 audit report and ACF's penalty determination was to be expected given that ACF needed not only to review the report and determine whether it established that Rhode Island had completely corrected or discontinued its violations of the IEVS requirements, but also – after determining that Rhode Island had <u>not</u> completely corrected or discontinued the violations – to determine whether there was nonetheless a reason for Rhode Island to receive a reduced penalty. In any event, Rhode Island has not explained how any delay by ACF in acting on the audit report is relevant under the statutory and regulatory scheme. In our view, overturning or reducing the penalty simply because ACF did not render its final decision as quickly as might be expected would undercut that scheme and the incentive it provides to states to take actions within their control to comply with IEVS requirements intended to ensure that TANF funds are spent only on eligible individuals.

Rhode Island argues that the economic downturn, the natural disasters, and ACF's delay in imposing the penalty also provide a basis for waiving the interest that has accrued during the pendency of its appeal or at least during the period in October 2013 that the federal government shut down due to a lapse in appropriations. RI Reply Br. at 5. Just as the Board lacks the authority to waive the penalty, it also lacks the authority to waive the interest. In addition, we note that under 45 C.F.R. § 262.4(g), ACF may charge interest on a penalty only back to the date that ACF formally notified the state's governor about the penalty. Here, ACF formally notified the Governor of Rhode Island about the penalty by copying him on its letter to Rhode Island dated May 20, 2013 in which ACF explained that it would be imposing the penalty. *See* ACF Ex. 1, at 2. Because interest did not begin to accrue until the date of this notification letter, Rhode Island was not prejudiced by the time that elapsed between the issuance of the FY 2007 audit report and the issuance of the letter. The economic downturn and natural disasters identified by Rhode

Island also predate May 20, 2013, so they are irrelevant as well. We also note that although the regulations limit the amount of the penalty that ACF may impose on a state to 25 percent of a state's quarterly SFAG amount (45 C.F.R. § 262.1(d)), there is no evidence that the penalty with interest approaches this limit.

Conclusion

For the reasons stated above, we uphold ACF's determination to impose a penalty on Rhode Island in the amount of $1,718,610 based on Rhode Island's failure to participate in IEVS.

/s/
Leslie A. Sussan

/s/
Constance B. Tobias

/s/
Judith A. Ballard
Presiding Board Member