

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Recovery Resource Center, DATE: May 16, 2007
 Inc.
 Docket No. A-07-83
 Request for Reconsideration of
 DAB No. 2063
 Board Ruling No. 2007-2

RULING ON REQUEST FOR RECONSIDERATION

On January 31, 2007, the Departmental Appeals Board (Board) issued a decision affirming the denial by the Substance Abuse and Mental Health Services Administration (SAMHSA) of a continuation grant award to Recovery Resource Center, Inc., (RRC) for a project funded under the federal Recovery Community Services Program (RCSP). Recovery Resource Center, Inc., DAB No. 2063 (2007) (Board Decision). On April 24, 2007, RRC sent an email communication to the Board asserting that it was requesting reconsideration of the Board Decision. After review of the reconsideration request and the various documents that RRC submitted thereafter, we conclude that the reconsideration request is neither timely nor demonstrates a clear error of fact or law. We therefore deny the request for reconsideration.

Case background

The dispute addressed in the Board Decision began with an official letter, dated April 13, 2006, from SAMHSA notifying RRC of its decision to deny continuation funding for the fourth budget period of RRC's project under the RCSP. That letter identified three general areas of concern: (1) "fiscal management problems"; (2) "SF-270-draw-down problems"; and (3) "program performance problems." RRC Ex. E at 2-3 (April 13th decision letter). The April 13th decision letter was the culmination of a series of technical assistance efforts, site visits, and various discussions between SAMHSA and RRC over the

preceding two years.¹ RRC asked SAMHSA to reconsider and give RRC an opportunity to correct its deficiencies, which SAMHSA denied because RRC had failed to comply with SAMHSA's request for documentation in a timely fashion and because the problems exposed in the site visits were too pervasive to "resolve them adequately even through an extensive corrective action plan." RRC Ex. F. On May 16, 2006, SAMHSA sent RRC a final decision letter. On June 23, 2006, RRC filed its initial brief and exhibits in its appeal. The briefing closed on October 2, 2006, and the Board Decision was issued on January 31, 2007.

As noted, RRC first indicated its desire to seek reconsideration in an email on April 24, 2007, accompanied with a draft statement. On May 4, 2007, a FedEx package arrived at the Board with a revised 39-page RRC statement. An accompanying stack of documents was unmarked and unnumbered, and consisted of numerous emails. An email from RRC on May 4, 2007 states that these email communications are "evidence that we were very focused on SAMHSA's requests." The email also states that this package "does not have the exhibits." On May 8, 2007, the Board received an additional communication from RRC along with a list indexing 48 otherwise unmarked accompanying exhibits.

Reconsideration requirements

The Board has the authority to reconsider a decision it has issued where a party promptly alleges a clear error of fact or law. 45 C.F.R. § 16.13.

Analysis

The reconsideration request is not timely.

The regulations do not specify the time limit for filing a reconsideration request but require that a party act "promptly." RRC here first sought reconsideration just short of three months after the Board Decision was issued.

Cynthia Cameron, Executive Director of RRC, asserts that "RRC was informed of the decision on February 22, 2007." Cynthia Cameron email to Board, dated April 24, 2007. No documentation is

¹ The specifics of these contacts and other details about the background of this matter are set out in the Board Decision. The general information summarized here is simply for the convenience of the reader and does not alter any findings or conclusions in the Board Decision.

included that substantiates the implication that RRC did not know of the Board Decision for three weeks after issuance. A postal return receipt notice shows that the Board Decision was signed for by an individual named Gibbs at RRC's counsel's address on February 2, 2007. RRC admits that this law firm was counsel of record for RRC and had been retained by RRC for that purpose. We conclude that the date of receipt of the Board Decision by RRC is the date on which RRC's time to request reconsideration began to run.²

The Board has posted a practice manual on its website, and Ms. Cameron specifically states in her email of April 24, 2007 that she read the website's information on filing reconsideration requests. The manual explains the timeliness standards for reconsideration requests as follows:

There is no specified time limit for submitting a request for reconsideration, but it is obvious that the sooner a party submits the request, the less likely it is that there will be an issue of untimeliness; there should be no problem if the reconsideration request is submitted within 30 days after receiving the DAB's decision.

<http://www.hhs.gov/dab/appellate/manual.html#40> (Last revised Dec. 11, 2006)(DAB Practice Manual).

In determining whether a reconsideration request is timely, the Board has generally considered the surrounding circumstances to assess whether any delay was reasonable or unavoidable. Ms. Cameron offers no coherent explanation for having waited so long to request reconsideration. She was clearly aware of the lateness of her request, since she states in her initial email to the Board that "I have been subsequently writing a document that seems to just grow and grow. I am sending this document, attached, that is still in draft form because we do not want this request to be determined as untimely." Email from Cynthia Cameron to the Board, April 24, 2007. Even so, as described above, RRC did not complete its request for reconsideration until another 14 days.

The untimeliness of RRC's reconsideration request would be sufficient reason to decline to reopen and reconsider a final

² Even if we had accepted the alleged date when RRC was informed of the decision, more than two months passed before RRC indicated its interest in reconsideration.

decision. As discussed below, however, the request fails to meet the substantive regulatory requirement for reconsideration.

RRC neither alleged nor established a clear error of fact or law.

The primary requirement for seeking reconsideration is to allege that the Board committed a clear error of law or fact in its decision. RRC's explanation for seeking reconsideration is that, after reviewing the Board Decision, "RRC concludes that we did not provide the Board with evidence or argument for the Board to understand why RRC is entitled to the grant being reinstated and opportunity to correct, if needed." Letter to Board from Cynthia Cameron, dated May 1, 2007. RRC further states that it retained a lawyer rather than represent itself in the proceeding before the Board and apologizes because "it seems that legal counsel needs the input of the client, RRC, and we request the opportunity." Id.

The failure of RRC to work with its chosen counsel to provide documentation and argument that could support its position raises no allegation of error in the Board Decision. In any event, RRC advances no good cause why it could not have produced any relevant documents or materials during the proceedings. Indeed, if anything, RRC's conduct before the Board in delaying production of any relevant documentation until long after a final decision is issued adds further credence to SAMHSA's arguments about RRC's untimely and unresponsive answers to its inquiries.

RRC states that its responses to SAMHSA were hampered by the fact that, after SAMHSA's site visit, "most staff resigned stating that they were no longer secure in their jobs, they did not need RRC's chaos they had enough of their own, etc." Cynthia Cameron email to Board, dated May 4, 2007. Ms. Cameron asserts that she thereafter rebuilt the organization and that "by the time the grant was terminated, we were really rolling." Id. Far from an excuse for the inadequacy of RRC's responses first to SAMHSA and then to the Board, the state of affairs which Ms. Cameron describes again further substantiates SAMHSA's assessment of severity of problems at RRC.

In short, these contentions raise no allegation of clear error in the Board Decision and cannot support a reconsideration of the Board Decision. We note that, in general, reconsideration is an exceptional step and rarely granted. DAB Practice Manual. In general, for example, we will not reopen a decided case to address an issue that could have been raised before, but was not, or to receive additional evidence that could have been presented to the Board before it issued its decision, but was not.

We turn next to the statement, emails and exhibits proffered by RRC in further support of its request for reconsideration. Of 14 points which RRC sets out in its summary of its statement, the first eight consist entirely of criticisms of alleged shortcomings in various SAMHSA's communications to RRC prior to RRC's appeal to the Board. RRC Statement dated May 1, 2007, at 2-3. Any such shortcomings are irrelevant as RRC was provided ample notice, time and opportunity to respond to SAMHSA's allegations during the appeal process and failed to do so.³ Further, most of the criticisms were addressed in the Board Decision already. See Board Decision at 7-9.

Points 10, 13, and 14 allege that SAMHSA did not provide adequate monitoring of RRC's grant, adequate parameters for program evaluation, or adequate understanding of the RCSP program itself to justify defunding any program grantee. Id. at 3. Whatever the merits of RRC's frustrations with SAMHSA or with the grant program in which RRC chose to participate, these allegations cannot relieve RRC of its responsibility to account for federal funds in accordance with both the law and the notice of grant award.

In points 11 and 12, RRC alleges that it "provided evidence of numerous and exhaustive corrective actions" to SAMHSA without getting a response and that RRC actually responded timely to "each and every request of SAMHSA" over the "entire time of the project." Nothing in the record establishes the truth of these

³ The allegations made in the RRC statement summary again tend to reflect poorly on RRC rather than on SAMSHA. As one example, in item 6, RRC suggests that the period (12/19/2005-2/1/2006) given it by SAMSHA to respond to SAMSHA's concerns was inadequate. The reason given is as follows:

(SAMSHA was informed on October 31, 2005 that RRC QuickBooks had been stolen by an employee in response to the purchase of the RRC Van. This can be confirmed by Vena Nelson, former RRC Treasurer. She returned our QuickBooks but the damage - lack of confidence in our records - had already been done.) The Fiscal Site Report confirms that "most of the internal controls needed to ensure compliance with Federal grant regulations have been deconstructed due to the internal discord among the Staff and Board." This allotted time period also had the bad timing of the Holiday and tax season.

RRC Statement dated May 1, 2007, at 2.

broad claims. Even if we accepted these assertions as true, however, corrective actions that did not succeed in resolving the problems and responses that did not alleviate the concerns about RRC's mismanagement of its grant can hardly serve to undercut the bases of SAMHSA's findings upheld in the Board Decision.

Only point 9 directly addresses one of the fiscal issues, the unapproved carryover of funds between budget years. On that point, however, RRC offers nothing tending to undercut the facts as found in the Board Decision. Rather, RRC admits that "Not only did we (and many grantees) not understand Carry-Over, of the knowledge we had was erroneous [sic] and the information was provided by SAMHSA." RRC Statement dated May 1, 2007, at 3. Again, any claimed inadequacies in SAMHSA's guidance, even if true, would not establish that RRC complied with applicable requirements in handling federal funds.

In short, none of the allegations in the summary statement allege a clear error of fact or law related to anything material to the outcome of the Board Decision.

A review of the remainder of the statement itself, the attached exhibits and the stack of email correspondence sketches out a number of additional themes, but nowhere lays out an allegation of a clear material error of fact or law in the Board Decision. The themes recurring throughout the RRC papers include the following:

- 1) Various members of RRC's board and staff, since departed, created all the problems.
- 2) The RCSP program emphasized in training grantees the importance of involving recovering addicts in running grantees but SAMHSA failed to recognize or plan for the consequences of "a bunch of drug addicts" running programs. See, e.g., RRC Statement dated May 1, 2007, at 7. RRC should not be penalized for SAMHSA's learning process.
- 3) SAMHSA did not give RRC a fair chance to be heard before taking action against RRC. Id. at 7-9.
- 4) Any mistakes in unallowable spending were not willful or malicious, and, if anything, RRC erred by being too frugal without understanding that saved funds would not carry over. Id. at 10-11.
- 5) SAMHSA and Inspector General visits frightened people and

caused additional upset and confusion. Id. at 31-34.⁴

These themes largely go to where the blame should lie for how RRC's numerous management and fiscal failings, set out in the Board Decision, came to be. None of these points, even if proven, can serve to entitle RRC to continued funding in the face of those largely undisputed failings.

As to the specific questioned costs, RRC's statement offers descriptions of the checks involved and explanations of why RRC thought the expenditures allowable for the special purposes of the RCSP program. Id. at 11-18. Even at this late date, actual supporting documentation for these expenditures is not included in the fairly voluminous materials submitted with the request for reconsideration. In a number of cases, the explanation is merely that Ms. Cameron does not remember the purchase but the purposes were grant-related. See, e.g., id. at 14. Furthermore, even had RRC come forward with meaningful source documentation on some or all of the individual questioned costs, this would not undercut the Board Decision, which rested on numerous findings of systemic breakdowns and mismanagement.

In summary, despite have taken the time to review the largely disorganized and belated materials sent in by RRC since April 24, 2007, we can find no allegation of clear error of law or fact, much less an error that could materially alter the Board Decision.

Conclusion

We conclude that RRC's request for reconsideration is untimely and fails to set out any clear error of law or fact material to

⁴ Another theme might be said to be that Ms. Cameron is a founder of the organization, cares deeply about its work, has poured energy, time and resources into trying to make it successful, and generally is not a "villain" in the situation. None of this is material to the grounds for RRC's termination, but perhaps it is useful to point out that termination is a remedy to protect federal funds, not a judgment upon or punishment of the grantee or its founder.

the Board Decision. For the reasons explained in detail above, we deny the reconsideration request.

_____/s/
Judith A. Ballard

_____/s/
Donald F. Garrett

_____/s/
Leslie A. Sussan
Presiding Board Member