

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Camden County Council on Economic Opportunity, Inc.
Docket No. A-07-25
Decision No. 2086

DATE: May 23, 2007

DECISION

The Camden County Council on Economic Opportunity, Inc. (CCCEO) appealed an October 25, 2006 decision by the Administration for Children and Families (ACF) to disallow \$13,106 in Head Start funding for certain salary and related overhead expenses incurred by CCCEO. We find no merit to CCCEO's appeal and therefore affirm the disallowance.

Background

Under a federal Head Start grant,¹ CCCEO, a New Jersey non-profit corporation, provides early childhood education and development services at multiple locations in Camden County, New Jersey. ACF Ex. 1, at 2. In addition to providing services under its Head Start grant, CCCEO operates other publicly-funded programs, including one that offers transitional housing to persons at risk of becoming homeless. Id.

In March 2006, ACF received anonymous allegations that CCCEO had used Head Start grant funds to: (1) pay the wages and related expenses of two non-Head Start employees; (2) finance credit card purchases of home renovation materials and other personal items for Head Start staff and family members; and (3) pay the cost of

¹ Head Start is a national program providing comprehensive developmental services, including health, nutritional, educational, social and other services, to economically disadvantaged preschool children and their families. 42 U.S.C. § 9831. The Department of Health and Human Services (HHS), through ACF, provides funds to grantees to serve as Head Start agencies within designated communities and periodically reviews their performance in meeting program and fiscal requirements. See generally 42 U.S.C. § 9836.

repairing vehicles not on CCCEO's Head Start vehicle inventory. ACF Ex. 1, at 2. ACF asked the Department of Health and Human Services' Office of Inspector General (OIG) to investigate these allegations. Id.

In September 2006, the OIG issued a report of its findings.² ACF Ex. 1. The OIG found no evidence to support the second and third allegations (regarding credit card purchases and vehicle repair). Id. at 4-5. However, the OIG found evidence partially supporting the first allegation – namely, evidence that CCCEO had used Head Start funds to pay wages and related expenses of a non-Head Start employee. Id. at 3-4.

The OIG's investigation of the first allegation focused on two CCCEO employees whom the OIG referred to as Employee X and Employee Y. The OIG interviewed both employees, examined their personnel files, and reviewed relevant timesheets and payroll records. ACF Ex. 1, at 3. This inquiry revealed the following information, according to the OIG.

In 2002, CCCEO hired Employees X and Y to furnish carpentry and maintenance services for its transitional housing program and other non-Head Start projects. ACF Ex. 1, at 3. Payroll records revealed that the wages of these two employees "were normally charged entirely to non-Head Start-related projects." Id.

Employee X told the OIG that, between February 6 and June 11, 2004, he worked closely with Employee Y to renovate a Head Start facility called Yorkship Square.³ ACF Ex. 1, at 3. Employee Y largely contradicted this. He told the OIG that, from February 6 to May 14, 2004, he spent only part of one day working at Yorkship Square and did not work with Employee X on that day. Id. at 4. Employee Y also told the OIG that, during that three-

² Department of Health and Human Services, Office of Inspector General, *Review of Allegations Regarding the Misuse of Federal Funds by Camden County Council on Economic Opportunity, Inc.*, No. A-02-06-02007 (Sept. 2006).

³ Employee X also stated that he worked on Yorkship Square renovations for several months after June 2004. ACF Ex. 1, at 3. The OIG indicated that the latter assertion conflicted with CCCEO's payroll records, which showed that Employee X had performed no work for CCCEO between July 2004 and April 2005. Id. at 3-4. On that basis, the OIG questioned Employee X's credibility generally. Id.

month period (from February to May 2004), he performed "the same duties routinely assigned to him." Id.

Based on these investigative findings, the OIG concluded that CCCEO had improperly used \$13,106 in federal Head Start funds to pay wages and overhead expenses for work performed by Employee Y from February 6 through May 14, 2004.⁴ ACF Ex. 1, at 4. The OIG stated that it could not reach a "definitive conclusion" about whether CCCEO had misused Head Start funds to pay Employee X between February and June 2004 but noted that the employees' conflicting statements had raised "serious questions" about that issue. Id.

ACF accepted the OIG's conclusions. Accordingly, on October 25, 2006, ACF notified CCCEO by letter of its decision to disallow \$13,106 in Head Start funding for wages and related overhead expenses for Employee Y for the period from February 6 through May 14, 2004.

On November 22, 2006, CCCEO filed a notice of appeal with the Board. CCCEO stated in the notice of appeal that Employee Y and another employee (presumably Employee X) had been "temporarily hired . . . to work on the rehabilitation of the Yorkship Head Start facility," a "major project" that "took several years to complete." Notice of Appeal (N.A.) at 2. CCCEO further stated that, in May 2004, after the Yorkship project was completed, Employee Y, whose name is Glen Davis, was transferred "back to Supportive Housing" projects. Id.

After the Board received CCCEO's notice of appeal, the parties filed written argument and documentary evidence. CCCEO filed a two-page letter dated January 8, 2007, along with three exhibits that included Mr. Davis's timesheets for the period from February 6 to May 14, 2004. See CCCEO Ex. 2. CCCEO stated in the January 8, 2007 letter (App. Let.) that it hired Mr. Davis to perform non-Head Start work but reassigned him in August 2002 to a Head Start project called "Bridge of Peace." App. Let. at 1. CCCEO further stated that Mr. Davis performed Head Start duties "for a couple of years" after August 2002 and that the Bridge of Peace project was his "main responsibility" during those years. Id. Citing a "Personnel Action Form" with an effective date of May 3, 2004 (CCCEO Ex. 3), CCCEO stated that Mr. Davis was transferred back to non-Head Start projects in May 2004. Id. at 2. CCCEO

⁴ The total of \$13,106 excluded wages for one-half day of work performed by Employee Y at Yorkship Square. ACF Ex. 1, at 4 n.1.

stated that “[a]t no time” between August 2002 and May 2004 did Mr. Davis work on non-Head Start projects. *Id.* at 1.

In response to CCCEO’s submission, ACF filed a letter containing legal argument (ACF Response) along with a copy of the OIG’s September 2006 report (ACF Ex. 1).

Discussion

Nonprofit organizations that receive federal Head Start funds are subject to Office of Management and Budget (OMB) Circular A-122, *Cost Principles for Non-Profit Organizations*.⁵ 45 C.F.R. § 74.27(a). The “cost principles” established in OMB Circular A-122 are used to determine whether, or to what extent, an organization’s expenditures may be charged to a federal “award,” such as a grant or cost reimbursement contract. Home Education Livelihood Program, Inc., DAB No. 1598, at 5-6 (1996). In 2005, OMB codified OMB Circular A-122 in the Code of Federal Regulations. 70 Fed. Reg. 51,927 (Aug. 31, 2005). We cite to those regulations, which are found in 2 C.F.R. Part 230, when referring to relevant cost principles.

In order for a cost or expense to be “allowable” – that is, chargeable to a federal grant or other award – the cost or expense must, among other things, be “reasonable for the performance of the award and be allocable thereto[.]” 2 C.F.R. Part 230, App. A, ¶ A.2.a. A cost is allocable to a grant or other award if, among things, it –

- (1) Is incurred specifically for the award,
- (2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or
- (3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

⁵ OMB Circular A-122 was last revised on May 10, 2004. 69 Fed. Reg. 25,970 (May 10, 2004). Prior to 2004, the most recent substantive revision to the circular became effective on June 1, 1998. Vermont Slauson Economic Development Corp., DAB No. 1955 (2004); 63 Fed. Reg. 29,794 (June 1, 1998). The provisions of the circular that are relevant to this case have remained unchanged since at least June 1998.

Id. ¶ A.4.a.

We have consistently held that when a cost is disallowed by the grantor agency, the burden is on the grantee to prove, with appropriate documentation, that the cost is allowable under the cost principles and other relevant program requirements. Marie Detty Youth and Family Servs. Center, Inc., DAB No. 2024 (2006) (noting that it is a "fundamental principle of grants management that a grantee is required to document its costs"); Northstar Youth Services, DAB No. 1884 (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"); see also 2 C.F.R. Part 230, App. A, ¶ A.2.g (stating that costs must be "adequately documented" in order to be allowable).

We thus consider whether CCCEO carried its burden with respect to the costs disallowed by ACF. Those costs are the wages and related overhead expenses charged to CCCEO's Head Start grant for work performed by Mr. Davis (Employee Y) from February 6 through May 14, 2004. Mr. Davis reportedly stated in his interview with the OIG that he did not (except for one-half day) work at the Yorkship Square Head Start facility between February 6 and May 14, 2006 and that, during this period, he performed the work he ordinarily performed, which, according to the OIG, was unrelated to Head Start. CCCEO did not produce an affidavit or other written statement from Mr. Davis contradicting his statement to the OIG. By itself, a contradictory written statement from Mr. Davis would not prove that his pay should be allocated, in whole or part, to Head Start. North Dakota Children's Services Coordinating Committee, DAB No. 1399 (1993) (Board generally reluctant to find non-contemporaneous documentation meets applicable record keeping requirements, holding that such documentation must be closely scrutinized, citing Second Street Youth Center Foundation, Inc., DAB No. 1270, at 5 (1991)). But the absence of such a statement is telling because it leaves unchallenged his statement to the OIG that he did not perform substantial work for Head Start between February and May 2004.

For its part, CCCEO has made vague and seemingly inconsistent statements about Mr. Davis's work. In the notice of appeal, CCCEO asserted that it hired Mr. Davis, a carpenter and maintenance man, to help renovate its Yorkship Square Head Start facility, that this project took "several years" to complete, and that Mr. Davis was transferred back to non-Head Start projects in May 2004 when the Yorkship Square project was completed. These assertions suggest that Mr. Davis worked at the Yorkship Square

Head Start facility from February 6 through May 14, 2004. But there is no clear statement in the notice of appeal to that effect. The notice of appeal states only that Mr. Davis was "hired by Head Start to work" at Yorkship Square and that he was transferred to non-Head Start projects in May 2004. The notice of appeal does state that Mr. Davis worked exclusively on "Head Start-related activities" between February 6 and May 14, 2004 but does not indicate where those activities were performed.

CCCEO's January 8, 2007 letter indicates that CCCEO hired Mr. Davis for non-Head Start projects and that it transferred him in August 2002 to a Head Start project called Bridge of Peace, whose relationship, if any, to the Yorkship Square renovation project is not specified. The January 8, 2007 letter further states that Mr. Davis worked primarily on the Bridge of Peace project and various other unnamed Head Start projects between August 2002 and May 2004. As with the notice of appeal, the January 8, 2007 letter fails to state precisely where Mr. Davis worked on which days between February 6 and May 14, 2004, information which might have helped verify CCCEO's claim that his work benefitted the Head Start program.

The documents submitted by CCCEO shed no light on the issue. Those documents include bi-weekly timesheets which show the number of daily hours worked by Mr. Davis from February 9 through May 14, 2006. CCCEO Ex. 2. In the upper right-hand corner of each timesheet, there is a line on which the employee or employer is supposed to specify the "Program" and "Site/Location" to which the documented work hours relate. Also, in the lower half of the timesheet, there is a column in which to enter an appropriate "program code" - the program code for Head Start is 22-00 - for the documented hours. These portions of Mr. Davis's timesheets are blank. None of the timesheets indicate the nature or purpose of the work performed by Mr. Davis between February and May 2004. They merely indicate the number of hours he worked during that period.

CCCEO stated in its notice of appeal that Mr. Davis's work between February 6 and May 14, 2004 was supervised by Head Start supervisors John Gardner and Rhonda Hurley. N.A. at 1. Neither Mr. Gardner nor Ms. Hurley appears to have signed any of the timesheets submitted by CCCEO or provided written statements confirming that Mr. Davis had performed Head Start-related work between February and May 2004. Various other individuals signed as supervisors for different weeks, casting further doubt on the claim that Mr. Davis worked only on Head Start-related activities during that period.

In addition to Mr. Davis's timesheets, CCCEO submitted two "Personnel Action Forms." The first purports to be a record of an August 2002 action bringing Mr. Davis on as "new-hired (90 days probation)." ⁶ CCCEO Ex. 1. The box at the bottom of this form indicates that CCCEO's Head Start Director, Evette Benton, requested that Mr. Davis be hired. Id. The second Personnel Action Form reflects the May 2004 transfer of Mr. Davis from Head Start to "Supportive Housing" projects. Neither of these Personnel Action Forms documents whether Mr. Davis *actually* performed Head Start-related work in the period from February 6 through May 14, 2004. These forms merely prove that his supervisors made decisions in August 2002 and May 2004 with respect to his employment or work assignments.

The cost principles require a grantee to have specific documentation of the allowability of wages, salaries, and related expenses. 2 C.F.R. Part 230, App. B, ¶ 8.b. Wages or salaries charged to a federal award must be based on "documented payrolls approved by a responsible official(s) of the organization[.]" Id. ¶ 8.m.1. In addition, "[t]he distribution of salaries and wages to awards must be supported by personnel activity reports" that (1) "reflect an after-the-fact determination of the actual activity of each employee"; (2) "account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization"; (3) are "signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, [and indicate] that the

⁶ This document does not clarify the apparent contradiction about whether Mr. Davis was initially hired for the transitional housing program and transferred to Head Start or was brought on for the Head Start program from the beginning. CCCEO stated in its January 8, 2007 letter that Mr. Davis was hired in 2002 "for non-related HeadStart activities," and that he was "transferred back" to those activities in May 2004. In the notice of appeal, however, CCCEO stated that Mr. Davis was "temporarily hired by Head Start." The audit report found that Mr. Davis was hired to "furnish carpentry and maintenance services" for transitional housing and other non-Head Start programs. We do not need to resolve the circumstances of Mr. Davis' hiring and/or transfer to the Head Start program, since we find on other grounds that CCCEO has failed to document adequately what work, if any, he performed to benefit Head Start between February 6 and May 14, 2006. Nevertheless, the lack of clarity in CCCEO's records and statements on this subject further reduces the credibility of CCCEO's recordkeeping generally.

distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports"; and (4) are "prepared at least monthly" and "coincide with one or more pay periods."⁷ Id. 8.m.2.

The documentation furnished by CCCEO is clearly insufficient under the cost principles. Although CCCEO produced timesheets that reflect the number of hours that Mr. Davis worked as its employee between February 6 and May 14, 2007, the timesheets do not indicate that the hours were spent on activities that supported or benefitted the Head Start program. The timesheets and Personnel Action Forms do not meet the requirements for a "personal activity report," which, under the cost principles, must reflect an after-the-fact determination of the "actual activity" of the employee during the period in question. As discussed, these documents contain no information whatsoever about the nature, purpose, or distribution of Mr. Davis's actual work activity between February 6 and May 14, 2004.

In light of this inadequate documentation and CCCEO's vague and conflicting representations, we conclude that CCCEO has not met its burden to demonstrate the allowability of the disallowed wage and overhead costs. See Second Street Youth Center Foundation, Inc. (rejecting, as inadequate under the cost principles, payroll timesheets and other evidence that, while showing the number of hours worked by the former executive director, failed to indicate whether those hours related to the Head Start program).

⁷ The cost principles permit the organization to use another method of documenting the "distribution of wages and salaries" if the alternative method is approved in writing by the "cognizant agency" (the agency responsible for negotiating and approving indirect cost rates for non-profit organizations on behalf of other federal agencies). 2 C.F.R. Part 230, App. B, ¶ 8.m.1. CCCEO does not claim to have had another approved system.

Conclusion

For the reasons discussed, we affirm ACF's decision to disallow \$13,106 in Head Start funding for wages and related overhead expenses for the period from February 6 through May 14, 2004.

_____/s/
Donald F. Garrett

_____/s/
Sheila Ann Hegy

_____/s/
Leslie A. Sussan
Presiding Board Member