

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Juniata County Child Care and DATE: June 7, 2007
 Development Services, Inc.
 Docket No. A-06-116
 Control No. A-03-05-03317
 Decision No. 2089

DECISION

Juniata County Child Care and Development Services, Inc. (Juniata) appealed a determination by the Administration for Children and Families (ACF) disallowing \$108,905 in costs Juniata charged to its Head Start grant for the period February 1, 2004 to January 31, 2005. Based on an audit report for that period, ACF determined that Juniata had misused \$90,000 in grant funds to pay off a line of credit established during the prior year. ACF also determined that Juniata had not provided an acceptable response to questions raised by the auditors regarding \$18,905 in costs that the auditors found were unsupported and unallowable costs for items such as personal medical expenses for a Head Start employee, services extending beyond the grant period, and late fees on a credit card.

In its notice of appeal, Juniata said that it did not dispute the disallowance of the \$90,000 for misuse of funds, but believed it could justify the \$18,905 in questioned costs. Juniata asked for the specific transaction dates for certain questioned costs, so it could provide supporting documentation for the costs. In acknowledging the appeal, the Board asked ACF to provide this information. On August 23, 2006, ACF provided a spreadsheet listing the cost items and the bases on which the auditors had questioned the costs and gave Juniata an opportunity to offer documentation to support the allowability of the costs in question. On September 29, 2006, Juniata wrote ACF that Juniata "unfortunately cannot locate the documentation requested" and that "the records for these transactions are completely missing." See ACF letter of Nov. 3, 2006, at 2. Juniata also asserted that it had previously sent to ACF copies of checks. ACF responded that it had no record of any documentation submitted by Juniata to substantiate the \$18,905 in questioned costs, and that, in any

event, checks alone would not be sufficient supporting documentation to substantiate the costs. Id.

On December 15, 2006, Juniata submitted additional documentation to ACF, including bank statements, copies of checks, and a list of payments. See ACF letter of Feb. 6, 2007, J. Ex. H. ACF reviewed these materials and determined that the documentation was "inadequate to establish the allocability and allowability of these expenditures in accordance with the governing cost principles contained in 2 CFR Part 230 (Cost Principles for Non-Profit Organizations (OMB Circular A-122))." Id. On February 6, 2007, ACF affirmed its decision to disallow the costs.

Juniata submitted no additional documentation to the Board, but relies on equitable considerations and evidentiary rules to argue that we should accept the bank statements and checks as adequate to support the costs. For the reasons stated below, we uphold the disallowance.

Analysis

Non-profit organizations that receive Head Start grants are subject to the general administrative requirements at 45 C.F.R. Part 74, which in turn make the cost principles in OMB Circular A-122 applicable. 45 C.F.R. §§ 74.1, 74.27(a), 1301.10(a). Recipients of federal funds must meet standards for financial management systems and must provide for and retain records that identify adequately the source and application of funds for grant activities, as well as cost accounting records that are supported by source documentation. 45 C.F.R. §§ 74.21, 74.53. 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 approved pre-award costs). 45 C.F.R. § 74.28. Under OMB Circular A-122, to be "allowable" under an award costs must be, among other things, reasonable for the performance of the award and allocable to the award, determined in accordance with generally accepted accounting principles, and adequately documented. OMB Cir. A-122, Attachment (Att.) A, ¶ A.2. To be allocable to an award, a cost must be of benefit to the award, because it is incurred specifically for the award, benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or is necessary to the overall operation of the organization. Id., ¶ A.4. In addition to setting out these general principles for determining allowability of costs, the Circular specifically addresses the allowability of selected items of cost. Id., Att. B.

Juniata notes on appeal that Edward Jamison, its former Executive Director, recently pled guilty to forgery in altering minutes of Juniata's Board "to obtain a loan to pay off Headstart grant funds which he personally had misappropriated." J. Br. at 3. Juniata further provides evidence that Mr. Jamison will be ordered to provide restitution to Juniata in the amount of \$90,000. J. letter of May 9, 2007. Juniata requests a hearing to establish that the purchase orders, invoices, and/or receipts that ACF seeks "no longer exist in that they were destroyed by Mr. Jamison and/or an agent acting under Mr. Jamison's control, and that the vendors were not able to duplicate or replicate these" documents for Juniata to submit to ACF. J. Br. at 4-5. Juniata argues: "As Mr. Jamison was acting outside the scope of his authority and not in the best interest of the corporation, Appellant's submission of documentation including copies of checks and bank statements should be deemed sufficient in light of the fact that it is the best evidence available at this time." Id. at 4. According to Juniata, because any copies of receipts, purchase orders, and/or invoices were shredded by either Mr. Jamison or his agent, these documents no longer exist and the copies of checks and bank statements should be considered sufficient to support the \$18,905 in disputed costs. Juniata also argues that allowing the \$18,905 would serve the "interests of equity" since "Appellant has established due diligence in trying to replicate and/or duplicate the lost or destroyed receipts, purchase orders, and invoices, as well as the financial hardship it would cause to the corporation, a small nonprofit day care and child care information agency." Id.

We do not consider a hearing necessary in this case since, even if we accept as true Juniata's assertions regarding destruction of the documents and the vendors' inability to duplicate or replicate those documents, these assertions would not provide a basis for reversing the disallowance.

The responsibility for maintaining adequate records rested with Juniata, as the recipient of federal grant funds. Indeed, Head Start regulations specify that a grantee's governing body has a responsibility to ensure that appropriate internal controls are established and implemented to safeguard federal funds. 45 C.F.R. § 1304.50(g). Even assuming, as Juniata asserts, that Mr. Jamison was acting outside the scope of his authority and was not acting in the best interests of the corporation when he (or his agent) destroyed or lost the documentation, that does not mean that Juniata, which hired Mr. Jamison and had a responsibility for overseeing him, can evade its responsibility to account for the federal funds it received. See, e.g., Action for Youth Christian Council, Inc., DAB No. 1651, at 18 (1998) (grantee

"responsible for the proper administration of its grant program, despite any problems it asserts it had with staff or its Board"); Utica Head Start Children and Families, Inc., DAB No. 1749, at 18 (2000) (Head Start grantee "had to have written policies that defined the responsibilities of its governing body, its board of directors, and in turn had to ensure by means of those policies that appropriate internal controls were established and implemented to safeguard federal funds").

While we accept the cancelled checks and bank statements as evidence that Juniata in fact incurred most of the costs at issue, those documents are not sufficient, by themselves, to show that all of the costs for which Juniata claimed reimbursement were allowable types of costs that are allocable to the grant award for the period at issue. Indeed, with respect to some of the cost items, the auditors specifically found them to be costs that are unallowable under the cost principles or not allocable to the grant in question. ACF Ex. 1. For example, the auditors found that some of the costs were for late fees on a credit card. Such costs are generally not considered reasonable and necessary costs since they are avoidable. The auditors found that other costs were for insurance coverage beyond the grant period, which therefore were not of benefit to the grant to which they were charged. The auditors also found, and Juniata does not specifically deny, that some of the costs were for personal medical expenses of an employee. Such costs are not of benefit to the Head Start program. In addition, the itemized list of questioned costs provided to Juniata by ACF indicates that Juniata had recorded more costs for certain fringe benefits than it had actually paid. J. Ex. B-2. Yet, Juniata provided no analysis comparing the amounts it had claimed under the grant for those benefits with the amounts paid as shown by its cancelled checks.

This does not mean that copies of cancelled checks may never provide some support for the allowability of costs. Under the circumstances here, however, where Juniata does not deny that its Executive Director was engaged in fraudulent activities and that \$90,000 in federal funds was misspent, the cancelled checks and bank statements clearly cannot be considered adequate evidence that Juniata is entitled to federal funds to cover the \$18,905 in costs questioned by the auditors.

Juniata's reliance on Federal Rules of Evidence 1004(1) and (2) regarding admissibility of evidence when originals are lost or destroyed is misplaced. These rules do not apply in Board proceedings. Instead, the Board's rules provide that the Presiding Board Member "generally will admit evidence unless it

is determined to be clearly irrelevant, immaterial or unduly repetitious." 45 C.F.R. § 16.11(d). While these rules permit the Board to admit evidence other than purchase orders or invoices regarding the costs at issue, moreover, that does not necessarily mean that we would find that evidence to be sufficient to establish the allowability and allocability of the costs. Juniata proffers testimony about the destruction of the records and about its attempt to obtain copies from its vendors, but its proffer is notably silent on the issue of whether the costs at issue were allowable types of costs of benefit to the grant to which they were charged.

As ACF points out, moreover, the fact that Juniata may suffer financial hardship is irrelevant here. As the Board has indicated in prior cases, the burden or financial hardship which repayment might cause the grantee is not relevant to our consideration of whether grant costs are allowable. See, e.g., Bedford Stuyvesant Restoration Corp., DAB No. 1404 (1993). Juniata also seeks equitable relief based on its assertions to the effect that it is simply a victim of Mr. Jamison's unauthorized actions and itself acted with "due diligence" to obtain documentation from its vendors. The Board is bound by applicable laws and regulations, however, including the cost principles cited above. 45 C.F.R. § 16.14. Absent sufficient evidence that the costs at issue were allowable types of costs, allocable to Juniata's Head Start grant, we must uphold the disallowance.

Moreover, even if equitable considerations could properly be taken into account in determining what documentation is "adequate," we would question whether Juniata's actions can reasonably be viewed as "due diligence," as Juniata asserts. For example, Juniata does not claim to have sought to obtain copies of purchase orders or invoices from its vendors immediately upon learning that this documentation was missing. Indeed, the first time that Juniata claimed to have contacted the vendors and learned that the "invoices unfortunately are not available and cannot be replicated at this time" was in December 2006. J. Ex. G-1. The audit report, issued in January 2006, states that the auditors had discussed their audit findings with Juniata at the end of their fieldwork. ACF Ex. 1, at 4. In our view, due diligence would have meant acting immediately to address the audit findings, either by securing and copying any relevant records that Juniata had at the time or, if those records had already been destroyed (which is not clear from Juniata's presentation), by seeking to obtain copies from other sources, and then providing the copies to ACF. Yet, the only

documentation Juniata claims to have provided to ACF in response to the audit report is the cancelled checks.

In sum, even assuming the truth of Juniata's assertions about the destruction of its records and its inability to obtain copies from the vendors, that would not provide a basis for reversing the disallowance.

Conclusion

For the reasons stated above, we uphold ACF's disallowance in full.

_____/s/
Donald F. Garrett

_____/s/
Sheila Ann Hegy

_____/s/
Judith A. Ballard
Presiding Board Member