

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: New Life Ministry, Inc. DATE: August 31, 2007
Docket No. A-06-118
Control Nos. A-04-04-75374,
 A-04-04-75375, and
 A-04-04-75860
Decision No. 2113

DECISION

The New Life Ministry, Inc. (appellant) appealed a determination by the Division of Systems Policy, Payment Integrity, and Audit Resolution in the Office of Finance, Department of Health and Human Services (respondent) disallowing \$764,816 based on audits for the years ended December 31, 1999 through December 31, 2001. The respondent found that costs charged to federal programs in this amount were not supported by proper documentation. Letter dated 7/20/06, at 1. After receipt of the appeal, the Board determined that some of the disallowed costs were charged to grants made by the Mississippi Department of Mental Health or to HHS grants made directly to the State of Mississippi. Letter to parties dated 12/5/06. The Board also determined that, of the remaining disallowed costs, only one amount was identified as charged solely to an HHS direct, discretionary project grant. Id. The respondent subsequently withdrew the disallowance with respect to all of the disallowed costs except \$8,242 charged to the latter grant, made by the Substance Abuse and Mental Health Services Administration (SAMHSA) for a Project Eliminating Risk. Letter dated 3/20/07.

The independent auditors' report for the year ended December 31, 2001, which was the basis for the disallowance, shows \$8,242 as interfund transfers associated with the grant and states that this amount is one of several expenditures reported by the appellant "that were either not allowable under the terms of the grant or were not supported by documentation." Smith, Turner & Reeves report at 25. Although that audit report does not further identify the costs, the disallowance letter states that \$8,242 "represents payroll expenditures that could not be substantiated with time and effort reports." Letter dated 7/20/06, at 3. On

appeal, the appellant asserts that interfund transfers were made to a single account from which federal and state withholding taxes were paid and that \$8,242 "was the cost allocation from this particular grant[.]" Appellant's letter 4/25/07, Enclosure.

Nonprofit organizations that are recipients of discretionary grant awards, such as the appellant, are subject to Office of Management and Budget (OMB) Circular A-122, Cost Principles for Non-Profit Organizations (made applicable by 45 C.F.R. § 74.27(a)).¹ Under OMB Circular A-122, to be "allowable" under an award, a cost must be, among other things, reasonable for the performance of the award and allocable to the award. 2 C.F.R. Part 230, App. A, ¶ A.2.a. As relevant here, costs which are "incurred specifically for the award" can be allocated to the award. ¶ A.4.a. The Board has consistently held that it is a fundamental principle of grants management that a grantee is required to document its costs, and that the burden of demonstrating the allowability and allocability of costs for which funding was received under a grant rests with the grantee. See, e.g., Texas Migrant Council, Inc., DAB No. 1743 (2000), and decisions cited therein; see also 45 C.F.R. §§ 74.50-74.53 (1994). For the reasons discussed below, we conclude that the appellant has not met that burden here.

Although the audit report identifies the questioned costs as interfund transfers, that does not necessarily mean that they were not used to pay for allowable grant costs. As noted above, the appellant asserts that the funds were used to pay federal and state withholding taxes that were allocable to the SAMHSA grant. However, the appellant provides no documentation to show that it in fact expended that amount for federal and state withholding taxes. Even if we presume that such expenditures were made, the appellant failed to explain, much less document, the basis on which it determined that \$8,242 of the total amount paid for withholding taxes was allocable to the SAMHSA grant. If the withholding taxes were paid on salaries of individuals who spent only part of their time working on the SAMHSA grant, then time and effort reports for those individuals would be required to

¹ 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. 63 Fed. Reg. 29,794 (1998). The provisions of the circular that are relevant to this case have remained unchanged since at least June 1998. Effective August 31, 2005, OMB Circular A-122 was codified at 2 C.F.R. Part 230. 70 Fed. Reg. 51,927 (2005).

provide a basis for allocating the withholding taxes to this grant. The appellant does not dispute the statement in the disallowance letter that \$8,242 could not be substantiated with time and effort reports. If the withholding taxes were paid for individuals who worked exclusively on the SAMHSA grant, then time and effort reports would not have been required.² However, the appellant would need to show how the amount expended for withholding taxes was associated with the salaries of these individuals. The appellant does not specifically assert that the withholding taxes were paid for individuals who worked exclusively on the SAMHSA grant, much less identify the individuals, their salaries, and the applicable withholding taxes.

The appellant nevertheless disputes the disallowance on the ground that the Centers for Disease Control (CDC) (part of HHS) conducted an "exhaustive examination of the appellant's financial records for 2001" and "determined that the appellant was operating within the terms and conditions of federal procurement and grant policies." Appellant's letter dated 4/25/07, Enclosure.³ The appellant submitted a letter from a CDC Grants Management Officer advising it that CDC had reviewed the independent audit reports for the three years ended December 31, 2001, determined that the auditors may not have taken into account additional information that was made available to CDC regarding deficiencies identified in the audit reports, and decided to release all suspended CDC payments due to the appellant. Appellant's Ex. 3, at 1-2 (unnumbered) (letter dated 6/25/03 referencing a CDC award number). The costs questioned in the audit report for the year ended December 31, 2006 included

² According to a Management Letter included with the independent audit report for the year ended December 31, 2002, the appellant stated, in response to a recommendation that it develop and utilize a time sheet to provide evidence that services have been performed and of the program or grant to which the time should be charged, that "[e]ach employee is assigned exclusively to a program or grant. . . ." Appellant's Ex. 1, at 48. The audit report found, however, that the appellant's policies "do not prevent employees from working on more than one program." Id. at 33.

³ The respondent withdrew the disallowance related to the CDC grant after the Board pointed out that the grant was made directly to the State of Mississippi and that the State, not the appellant, would have been responsible for repaying any unallowable costs.

interfund transfers of CDC grant funds in the amount of \$21,244. It is unclear whether these interfund transfers, like the interfund transfers of SAMHSA grant funds, were for the purpose of paying withholding taxes. Even if this was the case, we do not know what documentation was provided to the auditors in the first instance that, in conjunction with the additional information considered by CDC, established to CDC's satisfaction that the costs were allowable. Accordingly, CDC's action is insufficient to establish that the costs in question here are allowable.

The appellant also disputes the disallowance based on a statement in the independent audit report for the year ended December 31, 2002 regarding the disposition of prior audit findings. Appellant's letter dated 4/25/07, Enclosure. That report states the following with respect to the amounts previously questioned as interfund transfers of CDC and SAMHSA grant funds:

The New Life Ministry, Inc. has instituted control procedures that should provide reasonable assurance that transactions are properly recorded. We assert that all charges against the grant are allowable per the grant agreement. Further, the Department of Health & Human Services sent a team to review both accounting and program aspects of The New Life Ministry, Inc.'s system. The DHS Team determined that no costs were unallowable.

Appellant's Ex. 1 (The Myles CPA Firm report) at 41. It is not clear from this report that the auditors examined the issue of whether the \$8,242 was allocable to the SAMHSA grant, even if they did examine whether there was an expenditure for allowable types of costs. Further, there is no evidence in the record regarding the HHS on-site review to which the quoted statement refers (and if it is the CDC review, it is not relevant for the reasons stated above). Even if HHS on-site reviewers indicated that the \$8,242 was allowable, however, that opinion was not reflected in the respondent's final written decision. An earlier contrary opinion by auditors or HHS reviewers does not relieve the appellant of its obligation to document that the costs were allowable. As discussed above, the appellant has failed to produce the necessary documentation.

Finally, the appellant relies on an undated "Corrective Action Plan" that purports to state "the official position" of the appellant's Board of Directors regarding the audit for the year ended December 31, 2001. Appellant's Brief dated 1/8/07, at 3 (unnumbered). The section of the plan relating to the audit finding in question here states "We accept the Auditors'

Recommendation." Appellant's Ex. 5, at 7-8 (emphasis in original). Even if this statement refers only to the auditors' recommendation that the appellant institute internal control procedures, there is nothing in the plan that provides a basis for reversing the disallowance.

Conclusion

For the foregoing reasons, we uphold the disallowance in the amount of \$8,242.

/s/
Sheila Ann Hegy

/s/
Constance B. Tobias

/s/
Judith A. Ballard
Presiding Board Member