

Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Tenderloin Health
Docket No. A-11-25
Decision No. 2420
November 7, 2011

DECISION

Tenderloin Health (TLH) appeals a determination by the Substance Abuse and Mental Health Services Administration (SAMHSA) disallowing federal funds paid to TLH under a grant from the Minority/Substance Abuse/HIV/Hepatitis Strategic Prevention Framework program. SAMHSA disallowed \$404,135 on the ground that TLH was unable to adequately document this amount as allowable expenditures for funds it received under the grant.

For the reasons discussed below, we uphold SAMHSA's disallowance of \$190,959 paid to TLH's predecessor under the first year of the grant. We uphold SAMHSA's disallowance of reimbursement TLH received under the second and third years of the grant in principle but remand to SAMHSA so that it can close the grant, and determine, pursuant to its closeout policies, the amount of grant funds TLH did receive for those years and the amount it can properly disallow.

Legal Background

Non-profit organizations that receive federal grants, such as TLH, are subject to the cost principles in Office of Management and Budget (OMB) Circular A-122, now codified at 2 C.F.R. Part 230, and the uniform administrative requirements at 45 C.F.R. Part 74. 45 C.F.R. §§ 74.1, 74.27.

The cost principles require a grantee's costs to be "adequately documented." 2 C.F.R. Part 230, App. A, ¶ A.2.g. The regulations also set forth documentation standards. These standards require, among other things, that a grantee have a financial management system that provides "[r]ecords that identify adequately the source and application of federal funds" as well as "[a]ccounting records, including cost accounting records, that are supported by source documentation." 45 C.F.R. §§ 74.21(b)(2), (b)(7). Grantees also are responsible for maintaining documentation "to account for receipt, obligation and expenditure of [grant] funds." 45 C.F.R. § 74.22(i)(1).

Additionally, grant awards set forth terms and conditions with which grantees must comply. Here the grant award informed TLH that it was required to comply not only with OMB Circular A-122 and Part 74, but also with the HHS Grants Policy Statement (GPS). *See, e.g.*, Disallowance Letter (DL) Att. A (initial grant award).¹ The GPS provides, among other things, that grantees must maintain financial management systems that are adequate to account for the expenditures of grant funds and to ensure that such funds are handled responsibly. GPS at II-61. The grant award provided that “[a]cceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn . . . from the grant payment system.” *Id.*

In reviewing this disallowance, the Board is “bound by all applicable laws and regulations.” 45 C.F.R. § 16.14. Therefore, the Board must uphold a disallowance where it is authorized by law and the grantee has not disproved the factual basis for the disallowance. *Northwest Tennessee Economic Development Council*, DAB No. 2200 (2008); *Arlington Community Action Program, Inc.*, DAB No. 2141 (2008); *Bedford Stuyvesant Restoration Corp.*, DAB No. 1404 (1993); *Huron Potawatomi, Inc.*, DAB No. 1889, at 9 (2003); *Harambee Child Development Council, Inc.*, DAB No. 1697 (1999).

Finally, the Board has repeatedly held that, under the applicable regulations and cost principles, a grantee bears the burden of documenting the existence and allowability of its expenditures of federal funds. *Benaroya Research Institute*, DAB No. 2197 (2008) (citing cases). The Board has also held that “[b]eing able to account for the expenditure of federal funds is a central responsibility of any grantee,” and that “[o]nce 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.” *Recovery Resource Center, Inc.*, DAB No. 2063, at 12-13 (2007); *see also Northstar Youth Services*, DAB No. 1844, at 5 (2003).

¹ TLH filed two sets of documents with its initial brief. One set was labeled Attachments A through H and consisted of documents that SAMHSA had attached, with these letter designations, to its disallowance letter of October 22, 2010. We cite those documents as “DL Att.” The other set was labeled Exhibits A through I. We cite those documents as “TLH Ex.” TLH also filed documents with its response to the Board’s Order that it labeled as Exhibits A-J. Because TLH also used the letters A through I for the exhibits submitted with its brief, we add “(2)” when we cite to TLH’s second set of exhibits bearing letters A through I (e.g. TLH Ex. A(2)). SAMHSA filed documents that it labeled as Attachments I through CC and which we refer to as “SAMHSA Att.”

Factual Background

In August 2005, SAMHSA awarded the Tenderloin AIDS Resource Center (TARC) a Minority/Substance Abuse/HIV/Hepatitis Strategic Prevention Framework grant of \$254,320 for the budget period September 30, 2005 through September 29, 2006. DL Att. A. Thereafter, SAMHSA made continuation awards for the grant in the same amount for the budget periods September 30, 2006 through September 29, 2007 and September 30, 2007 through September 29, 2008. *Id.*

In August 2006, the original grantee, TARC, merged with another nonprofit organization to form TLH. SAMSHA Att. K. In that merger, TARC's "assets and liabilities" were "transfer[red]" to TLH. *Id.* at 2. SAMHSA named TLH as the grantee in the subsequent grant years. DL Att. A at 5-1, 6-1, 7-1, 8-1, 9-1. Unless otherwise noted, our references hereafter to TLH include SAMHSA's dealings with both TLH and TARC under the grant.

In May 2006, after identifying problems in TARC's first quarter report, and after TARC did not respond to SAMHSA's resulting inquiry or timely file a second quarter report, SAMHSA classified TARC as a high-risk grantee.² DL Att. J. SAMHSA informed TARC that in the future its ability to draw down grant funds would be restricted as follows: "[r]equests to draw down funds awarded under this grant must be submitted to [SAMHSA] for prior approval before the funds can be released by the Division of Payment Management (DPM)." As discussed below, SAMHSA required TARC (and later TLH) to submit requests for reimbursement on Standard Form 270 (SF-270) ("Request for Advance or Reimbursement") for monthly grant expenditures and to file documentation supporting those expenditures.

In February 2008, TLH requested that the grant be terminated effective March 1, 2008, seven months prior to the end of the third year's budget period. TLH Br. at 4. SAMHSA accepted the request and issued a revised Notice of Award reflecting the March termination of the grant. TLH Ex. G.

² The awarding agency may designate the grantee as a high-risk organization and impose "special award conditions" when it has reason to believe that federal funds may be at risk of loss or misuse due to the grantee's inexperience, poor performance, financial mismanagement, noncompliance with grant terms and conditions or other circumstances. *See* 42 C.F.R. § 74.14.

In its disallowance letter, SAMHSA stated that it calculated the disallowance based on its review of TLH's "accounting reports, SF270s, and supporting source documentation" and reports from the Health and Human Services Payment Management System. DL at 4.

Relying on Payment Management System reports, SAMSHA determined that TLH had drawn down \$471,185 under the grant. *Id.* citing DL Att. G. SAMHSA concluded that TLH had documented only \$67,050 in allowable costs under the grant, \$38,213.01 in the first year and \$28,836.71 in the last two years. *Id.* citing DL Atts. E, F. SAMHSA disallowed \$404,135 -- the difference between the amount TLH allegedly drew down and the amount SAMHSA found to be adequately documented (\$471,185 - \$67,050). *Id.*

Analysis

In its initial appeal brief, TLH argues (1) that it should not be required to repay the disallowed funds because SAMHSA had previously approved TLH's expenditure of these funds based on SF-270s and accompanying documentation (TLH Br. at 1-4) and (2) that the disallowance should be reduced by certain "unreimbursed costs [totaling \$123,486] expended by TLH in connection with the program" (TLH Br. at 4) and (3) the disallowance should be calculated only on the amount it drew down after it was put on high-risk status (TLH Br. at 5). As discussed below, SAMHSA disputes these arguments and allegations. In its reply brief, TLH asserts for the first time that its accountant was "only able to verify [TLH's] receipt of funds from SAMHSA in the amount of \$21,674.66," not \$471,185 as alleged by SAMHSA. TLH Reply at 1. SAMSHA disputes this assertion. SAMSHA Response at 2.

Below we address the parties' arguments and evidence.

1. The fact that SAMHSA required TLH, after May 2006, to submit SF-270s and supporting documentation is not a basis for reversing this disallowance.

SAMHSA represents that it based its determination about allowable costs in this case on its findings in a March 2007 financial site review, on TLH's SF-270s and accompanying documentation, and on documentation TLH submitted in response to SAMHSA's requests for additional documentation supporting grant expenditures. DL at 4, citing DL Atts. E, F. SAMHSA recorded its findings regarding the allowability of TLH's expenditures on a multipage spreadsheet listing TLH's individual costs (such as salaries, supplies, consultant expenses) sorted by each month of the grant. DL Att. F. For most costs, SAMHSA explained its basis for rejecting the cost, for example, "claimed as budgeted, not actual," "not included and approved in budgeted costs," "no documentation provided to support cost," and "cost allocation methodology not provided." *Id.*

Neither party submitted to the Board the SF-270s and documentation that SAMHSA reviewed. TLH did not challenge SAMHSA's basis for disallowing any of the individual costs itemized on DL Attachment F. Instead, TLH relied on the fact that it had submitted SF-270s and documentation over the course of the grant period and argued as follows:

Given that TLH was permitted to drawdown these funds pursuant to the Grant, and that review and approval was to take place prior to the release of grant funds, it is not reasonable to require TLH to return grant funds from a grant that ended in 2008 through mutual agreement. TLH was entitled to assume that the documentation submitted with its invoices was sufficient given the formal notification by SAMHSA - on two separate occasions - that funds would not be released without prior review and approval. The majority of the grant funds were released after these notifications.

TLH Br. at 1.

SAMHSA responds to this argument by asserting SAMHSA did not actually approve TLH's drawing down of grant funds after putting TLH on restrictive status. SAMHSA explains that grant funds are paid to grantees by the Department of Payment Management (DPM) and that DPM had failed to "transfer the restriction [which was reflected in the second and third year grant awards] from TARC's account to TLH's new account." SAMHSA Response at 3, citing SAMHSA Atts. N, O. SAMHSA asserts that it did not learn of this failure until July 2008, more than four months after TLH had relinquished the grant. SAMHSA Response at 3. At that time, SAMHSA notified DPM to restrict the account. *Id.* citing SAMHSA Att. O. Based on these alleged facts, which TLH does not dispute, SAMHSA asserts that it had not "released any funds to TLH after reviewing and approving costs claimed in monthly reimbursement requests." SAMHSA Response at 2. Instead, SAMHSA asserts that, because DPM did not restrict TLH's account, TLH was "able to freely drawdown funds from . . . September 2006 through July 9, 2008." SAMHSA Response at 3.

After considering both parties' arguments, we reject TLH's argument for the following reasons.

Contrary to what TLH argues here, the fact that a high-risk grantee is required to file SF-270s and supporting documentation of its actual expenditures prior to payment does not alter the agency's authority under section 74.72 to take a disallowance. Indeed, section 74.72 of 45 C.F.R. expressly provides that even a closeout of an award "does not affect . . . [t]he right of the HHS awarding agency to disallow costs and recover funds on the basis of a later audit or other review." Thus the Board has previously upheld disallowances in cases in which high-risk grantees were required to file SF-270s and

supporting documentation. *See Suitland Family and Life Development Corporation*, DAB No. 2326 (2010); *Rhode Island Substance Abuse Prevention Task Force Association*, DAB No. 1681 (1999) (involving disallowances after the grantees' expenditures had been reimbursed on the basis of SF-270s and supporting documentation).

Reimbursement based on SF-270s and supporting documentation is only one means by which a federal agency tries to ensure that a high-risk grantee's expenditures are allowable. TLH's position that its restricted payment status should shield it from further review for compliance with federal standards would compromise SAMHSA's ability to safeguard federal funds paid to high-risk grantees, a class of grantees that have demonstrated management problems. TLH's position is contrary to the central purpose of the cost principles, which is to protect federal funds.

Thus, TLH is incorrect as a matter of law when it asserts that submission of SF-270s and supporting documentation preclude the agency from subsequently reviewing the allowability of a grantee's claimed costs and disallowing costs found to be unallowable. Moreover, TLH points to no factual circumstances particular to this case that support its position that we should overturn this disallowance or any part thereof. For example, TLH did not assert that its documentation met the requirements of Part 74 and OMB Circular A-122 for any of the disallowed costs individually itemized by SAMHSA in SAMSHA Attachment F. Indeed, although TLH represents that it submitted SF-270s and documentation to SAMHSA, it did not file SF-270s or supporting documentation before the Board. Therefore, on this record we cannot determine that TLH's submissions to SAMHSA did adequately document any of its costs.

Finally, as noted above, TLH does not dispute SAMHSA's assertions that TLH had unrestricted access to the grant funds because DPM failed to transfer the high-risk restriction to TLH's account and that, under those circumstances, DPM's payments are not evidence of SAMHSA approval of TLH's draw downs. SAMHSA Response at 1-2. Nor do we see any evidence that would cause us to conclude that SAMHSA actually authorized DPM's payment of grant funds to TLH after the grantee was put on restricted status.

For the preceding reasons we reject TLH's argument that its submission of SF-270s and supporting documentation is a basis for concluding that SAMHSA cannot disallow these costs for failure to comply with section 74.21 and OMB Circular A-122.

2. TLH has shown no basis for offsetting alleged “unreimbursed costs” in the amount of \$123,468 against the disallowed amount.

TLH requests that “a set-off of \$123,468 be applied [to the disallowed amount] to reflect unreimbursed costs expended by TLH in connection with the program.” TLH Br. at 4; *see also* TLH Reply at 3 (stating that “it is entitled to a credit of \$123,468 for significant unreimbursed costs that TLH expended in connection with the Grant, as evidenced by the audit performed” by its auditors). TLH asserts that these costs were for personnel, consultant fees, office expenses and supplies, and program supplies. TLH Br. at 5. TLH also submits what it characterizes as “audit work papers, audit report excerpts, and TLH general ledger entries” that, it represents, “were reviewed by TLH's auditor” and show that TLH is “entitled to . . . set-off amounts” totaling \$123,468. *Id.* at 4-5, citing TLH Ex. I.

We find no basis for this set-off argument. In the first place, TLH does not even allege that the \$123,468 figure consists of costs other than those SAMHSA previously reviewed and rejected as inadequately documented. *See* DL Atts. E, F. Moreover, there is evidence to the contrary. An auditor’s note on the fifth page of TLH Exhibit I, which is titled “Revenue of Federal Awards,” states that “\$123,467.93” is the “Agreed to total of July 2006 to June 2007 monthly reimbursement invoices submitted Amount tied to G/L.” TLH Exhibit I at 5. SAMSHA asserts, and TLH does not deny, that this entry shows that the \$123,468 TLH now seeks to offset is simply the sum of costs listed on TLH's SF-270s, costs that SAMHSA represents (and TLH does not dispute) it reviewed in calculating this disallowance. SAMHSA Response at 6; DL Atts. E, F.

In the second place, TLH's assertion that TLH Exhibit I establishes that its auditors determined that it incurred \$123,468 in allowable costs is not supported by the record. The “audit report excerpts” on which TLH relies in TLH Exhibit I show that that the auditors did not, as part of this audit, review the costs comprising this \$123,468 to determine whether they were allowable costs under the SAMHSA grant. The “audit report excerpts” in this exhibit appear at pages 3 and 4. TLH does not dispute SAMHSA’s assertion that these pages are from the single audit required under OMB Circular A-133 for grantees with multiple federal programs for the fiscal year ending June 30, 2007. SAMHSA Response at 5-6. (SAMSHA filed a copy of the entire audit at SAMHSA Attachment Q.³) Nor does TLH dispute SAMHSA’s assertions that SAMSHA

³ We can identify the audit excerpts in TLH Exhibit I by comparing it with the entire audit at SAMHSA Attachment Q. *Compare* TLH Ex. I at 3-4 with SAMHSA Att. Q, at 17-18.

Attachment Q shows that, because the SAMHSA grant did not qualify as one of TLH's "major Federal programs," TLH's "expenditures under the SAMHSA grant were not reviewed for allowability" in this audit. *Id.*, citing SAMHSA Att. Q, at 17 (which identifies TLH's three major federal programs); *see also id.* at 17-22 (identifying "questioned costs" in the three major programs whose costs were reviewed in the audit).

TLH relies on a list of "Amounts," associated with different "Programs," including an amount of \$123,467.73 associated with "SAMHSA" that appears on the second page of TLH Exhibit I. However, the auditors noted above the list, "We mailed the following receivables confirmations prepared by client." (Emphasis added.) This suggests that TLH gave the auditors this figure, not that the auditors either obtained the figure from the source documentation or determined that \$123,467.73 consisted of costs that were allowable under this grant.

In short, nothing in TLH Exhibit I or the record as a whole indicates that an audit determined the allowability of costs in the amount of \$123,468 or was even performed for that purpose.

3. SAMHSA may disallow undocumented costs that TLH incurred prior to June 2006, the month it was placed on high-risk status.

TLH also asserts that it "should not be obligated to pay any amounts prior to June 2006, when it was placed on restricted status due to programmatic problems." TLH Br. at 5. In its reply, TLH states that "equity requires that such moneys owing (if any) should not be calculated from a beginning date any earlier than June 2006, when TLH was placed on restricted status." TLH Br. at 5.

TLH provides no rational or authority for these assertions and we know of none. The cost principles require TLH's costs, irrespective of its "restricted status," to be reasonable, necessary, and adequately documented. The fact that TLH was not on high-risk status when some of these costs were incurred is irrelevant to its obligation to document the costs under the cost principles and uniform administrative requirements.

4. The record does not support TLH's assertion that it drew down only \$21,674.66 in SAMHSA grant funds.

Relying on a report from DPM's Payment Management System, SAMHSA alleged in its disallowance letter that "TLH's drawdowns under the SAMSHA grant totaled \$471,185." DL at 4, citing DL Att. G.

In its reply, TLH alleged, for the first time, that --

[i]n reviewing SAMHSA's opposition statement and researching the issue further, TLH has recently discovered that there exists no record of TLH receiving funds from SAMHSA in the amount of \$471,185 during the Grant period. Specifically, TLH's accountant reviewed the organization's general ledgers, bank statements and audit reports during the relevant time period and was only able to verify TLH's receipt of funds from SAMHSA in the amount of \$21,674.66.

TLH Reply at 1.

In response to TLH's new argument, the Board ordered the parties to submit additional briefing and documents, and the parties filed additional submissions in response to that order.

Below we discuss why we conclude that the record does not support TLH's assertion that it drew down only \$21,674.66 under the SAMSHA grant.

a. Overview of the DPM Payment Management System and TLH grants.

Based on the parties' submissions in response to the order to develop the record, we find the following facts to be undisputed.

Payments for Health and Human Services Grants are made to grantees by DPM based on records in its Payment Management System or PMS. DPM has two PMS accounts relevant to the SAMHSA grant. In each account, DPM managed both the SAMHSA grant and non-SAMHSA grants, specifically multiple grants awarded to TARC and TLH by the Health Resources and Services Administration (HRSA).

The relevant entries in these PMS accounts fall under the headings “AUTHORIZED,” “DISBURSED,” and “CHG ADV,” the last of which stands for CHARGE ADVANCE.

Under Authorized, DPM records the “cumulative amount of funds obligated for a particular award (grant).” SAMHSA Atts. W, at 5.

Under Disbursed, DPM records “the cumulative federal cash disbursements that the recipient organization has reported for the award (grant) on the SF-272 Federal Cash Transaction Report (former PSC-272).” *Id.* Grantees use the SF-272 to report cumulative federal cash disbursements that they have made under a grant “whether [the disbursements] have been drawn from the [PMS] or not.” *Id.* (Reporting federal cash disbursements attributable to a specific grant on a SF-272 does not cause DPM to release funds to the grantee.)

The total amount in CHG-ADV in the account represents the amount DPM has paid to the grantee out of that account. While a grant is open, the figures in the column CHG-ADV attributed to specific grants “represent the amount of drawdowns that have been charged to each open award document on the account [by PMS] based on an internal algorithm.” SAMHSA Att. W, at 5.

The granting agency is responsible for the administrative process of closing the award. *Id.* at 6. In the closing process, the granting agency reviews documentation for the grant and determines, through a funds reconciliation process, the amount that the grantee has drawn down from DPM under that grant. SAMHSA Att. W at 6; Att. Z at 4, 5 (SAMHSA “Grant Closeout Proposed Process” at 4-5 describing its “Funds Reconciliation” process.)

DPM used account number A6163G1 (referred to hereafter as the First Account) to manage the first year of the SAMHSA grant and HRSA grants that were awarded to TARC. SAMHSA Response at 3; SAMHSA Att. BB, at 2-4. When TLH replaced TARC as the grantee, DPM opened a second account, number B3139G1 (referred to as the Second Account), to manage the SAMHSA and HRSA grants awarded to TLH. *Id.*

SAMHSA calculated the disallowance on the basis of the amounts DPM reported under “CHG-ADV” for the SAMHSA grant. SAMHSA Response to Order at 1, 2-3, 4, citing SAMHSA Att. G. The CHG-ADV amounts reported are \$190,959 in Account One and \$280,226 in Account Two. TLH argues that SAMHSA cannot rely on these figures

because they represent only the application of an algorithm DPM uses to allocate total drawdowns (i.e. the total amount CHG-ADV) from an account among the grants in that account. TLH submission of October 27, 2011. TLH argues that the Board should rely instead on its financial records to determine the amount it drew down under the SAMHSA grant. *Id.*

- b. Neither TLH’s financial records nor the Chief Financial Officer’s declaration based on the records provides a reliable basis for determining the amount of federal funds TLH drew down under this grant.**

TLH submitted a declaration from its Chief Financial Officer (CFO) stating:

Based on my review of [TLH’s] Financial Records, I have concluded that – based on the review of the available records – SAMHSA only disbursed \$21,674.66 to TLH. In identifying the source of funds, I discovered that the majority of grant funds received by TLH were HRSA funds . . .

Declaration of CFO at 1. The CFO attached to her declaration spreadsheets setting forth the results of her record research and showing that, according to TLH records, TLH attributed only \$21,674.66 of drawdowns from Accounts One and Two to the SAMHSA grant. Declaration Exs. C and D.

Section 74.21(b)(2) of 45 C.F.R. requires HHS grantees to maintain “[r]ecords that identify adequately the source . . . of funds for HHS-sponsored activities.” Moreover, as the Board stated in its August 3, 2011 Order to Develop the Record, section 74.22(i)(1) requires grantees “to account for receipt, obligation and expenditure of [grant] funds.” As discussed below, TLH failed to show that it complied with these requirements or that the financial records TLH submitted are reliable and provide a basis for concluding that TLH drew down only \$21,674.66 under this grant. We base this finding on the following considerations.

First, early in the grant, SAMHSA found that TARC/TLH did not have adequate financial management systems. In March 2007, a SAMHSA Financial Services Advisory Services Officer (SAMHSA Financial Officer) conducted an on-site fiscal review for the grant. She documented many deficiencies in TARC’s and TLH’s financial management systems, one of which was an inability to account for the source of funds. She wrote, “TARC maintained one bank account for all its revenues and did not have accurate

financial records to account for the funds obtained through PMS from the SAMHSA grant.” DL Att. B, at 4. She found that “[p]er TARC’s records, as of 6/30/06, the funds drawn from the SAMHSA grant totaled \$60,997” and noted a significant difference between that amount and the amount of expenditures TLH reported on federal reporting forms. *Id.* at 1, 4.

The SAMHSA official’s finding is significant because it indicates that, from the beginning of the grant, TARC was not reliably accounting for its receipt of funds under the SAMHSA grant. Moreover, the SAMHSA Financial Officer’s on-site finding that TARC’s own records showed receipt of \$60,997 in SAMHSA grant funds as of June 30, 2006 conflicts with TLH’s present assertion that the records show receipt of only \$21,674.66 in total. *See* Declaration of CFO.

Second, TLH acknowledges that it suffered serious management problems during the grant years that have left current management “unable to provide documents to the satisfaction of SAMHSA.” TLH Br. at 4. It states, “Between the period from June 2006 and November 2009, TLH had experienced unprecedented turnover at the senior management level [including] five Chief Financial Officer changes, two senior accountant changes . . . and two Contracts/Operations Directors.” TLH Br. at 2. Furthermore, the CFO’s declaration indicates that her conclusion that TLH drew down only \$21,674.66 was “based on the review of the available records,” suggesting that the grantee’s records from the SAMSHA grant were incomplete.

Third, TLH’s assertion that TARC received only \$21,674.66 from the SAMHSA grant from Account 1 demonstrates the complete unreliability of its records. As discussed below, the PMS records show conclusively that all of the grant funds in the grants tracked in Account One were disbursed to TLH, including \$190,959 in SAMHSA funds. Therefore, TLH’s CFO’s inability to locate records that record receipt of more than \$21,674.66 in SAMHSA funds for the first year of the grant demonstrates the inherent unreliability of those records (and the CFO’s statements based on the records) and why they do not provide a basis for concluding that TLH drew down only \$21,674.66 under this grant.

5. The DPM records show that TARC drew down all of the SAMHSA grant funds in Account One – a total of \$190,959. We therefore uphold SAMHSA’s disallowance of \$190,959, less \$38,213.01 in costs that SAMHSA found to be adequately documented during this period.

DPM tracked the SAMHSA grant and four HRSA grants in Account One. SAMHSA Att. BB, at 3. An October 14, 2011 PMS report for Account One states that all of these grants were closed and that the Authorized, Disbursed and CHG-ADV amounts for all of

the grants in the account were \$1,549,993.45, meaning that all of the authorized funds in these accounts had been determined in the closeout process to have been drawn down.

Id. As to Account One, a DPM official confirmed:

[Account One] is a G type (cash pool) account and there is a total of 5 awards on the account. . . . The authorized, disbursed, charged advanced amounts are equal and all 5 grants have been closed by the awarding agency from which they were awarded. The recipient has drawn all of the funds and reported disbursements up to the authorized amount for [the SAMHSA award] as well as all of the other awards on the account.

SAMHSA Att. BB, at 2, citing *id.* at 3.

This evidence establishes that TARC drew down the \$190,959 in SAMHSA grant funds in Account One. Therefore, we uphold SAMHSA's disallowance of \$190,959, less \$38,213.01 in costs that SAMHSA found to be adequately documented for costs incurred in the first year of the grant. SAMHSA Att. E, at 1.

6. We uphold the remainder of the disallowance in principle but remand to SAMHSA so that it can close the grant and determine in the closeout process the amount of funds drawn down by TLH for the second and third years of the grant and the amount it can properly disallow.

In Account Two, PMS administers five HRSA grants in addition to the SAMHSA grant at issue. SAMHSA Att. BB, at 4. A PMS report dated October 14, 2011 states that, for all grants in this account, the total Authorized is \$4,318,068.49, the total Disbursed is \$3,602,856.59, and the total ADV-CHG (the amount TLH has received from this account) is \$3,552,412.78. The report also shows that the SAMSHA grant has not been closed. Based on this report, a DPM official stated:

[T]here is a total of 6 awards on the account of which 5 awards on the account are currently open. For [the SAMSHA grant] the recipient reported cumulative federal cash disbursements in the amount of \$281,875.87 on the Federal Cash Transaction Report for the quarter ending 9/30/08. This amount should be the amount of the award that the recipient has spent whether they have drawn the funds from the Payment Management System or not. I cannot determine how much the grantee has drawn on the grant because there are 5 grants open in the cash pool account.

SAMHSA confirms that “the second and third years of [this grant] have not been closed out” SAMHSA submission of October 14, 2011, at 3. It states further that it will “administratively closeout” the grant “in the near future” and attaches a document setting

forth its proposed closeout procedures. *Id.*; SAMHSA Att. Z. SAMSHA also represents that, for costs incurred in the second and third years of the grant, it determined that TLH could adequately document \$28,836.71 in costs. SAMHSA Att. E, at 2.

Based on the record in the case, we uphold in principle SAMHSA's disallowance of federal funds received by TLH for the second and third years of the grant in excess of the allowable \$28,836.71 in costs. We do so for the reasons previously discussed with respect to TLH's failure to carry its burden of adequately documenting allowable costs or to support its assertion that it drew down only \$21,674.66 in grant funds. However, we remand the portion of the disallowance that pertains to the last two years of the grant so that SAMHSA can do what is necessary to complete the grant closeout process and determine the amount of the drawdowns and the amount it can properly disallow, taking into account the \$28,836.71 in costs SAMHSA found adequately documented for those years.⁴

Conclusion

As to the first year of the grant, we uphold SAMHSA's disallowance of \$190,959, less \$38,213.01 in costs that SAMHSA found to be adequately documented for costs incurred in that year. We remand the part of the disallowance pertaining to the last two years of the grant so that SAMHSA can complete the grant closeout process, and determine the amount of TLH's drawdown, and hence calculate the amount properly disallowed.

/s/

Leslie A. Sussan

/s/

Constance B. Tobias

/s/

Sheila Ann Hegy
Presiding Board Member

⁴ We note that TLH requested "if any amount is found owing to SAMHSA, that payment may be made pursuant to a reasonable payment plan to ensure the solvency and continued operation of TLH. TLH Br. at 7. Part 30 of 45 C.F.R. "prescribes standards and procedures [for the] the collection and disposition of debts owed to the United States." 45 C.F.R. § 30.1. The Board has no authority to order a payment plan for TLH.