



DAB Confirms that Head Start Funds Can't Be Used for Cash Assistance but Permits Purchase of Plasma TV

Northwest Tennessee Economic Development Council, DAB No. 2200 (Sept. 2008)¹

May 2009 CAPLAW Update

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A decision of the U.S. Department of Health and Human Services (HHS) highlights the following principles of grants management: (1) the importance of independently checking that expenses to be charged to a grant are authorized under the law, regulations and cost principles that apply to the grant; (2) the hazards of relying on advice from and actions of government funding sources; and (3) the importance of carefully documenting expenses and how they benefit the grant.

In this decision, the HHS Departmental Appeals Board (DAB) upheld the disallowance of two out of three groups of expenses that Northeast Tennessee Economic Development Council (the Council) had charged to its Head Start grant: \$88,063 in cash assistance to low-income families in crisis and \$2,325 in purchases of Wal-Mart gift cards with employee morale funds. Notably, though, the DAB concluded that the purchase of a \$4,521 plasma TV for the Council's Head Start director's office was an allowable expense.

Background

Under governing cost principles, costs charged to a federal grant must be reasonable for the performance of the grant award.² Under this standard, "a cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances." Consideration must also be given to "whether the cost is a type generally recognized as ordinary and necessary for the operation of the organization."

Cash Assistance to Families in Crisis

Based on these standards, the HHS Administration for Children and Families (ACF) disallowed the Council's use of Head Start funds for cash assistance, which paid for utilities, rent, and other expenses for Head Start families in crisis. The Council contested the disallowance, noting that in using Head Start funds for this purpose, it relied on a conversation in the mid-1980s with a federal Head Start employee, who allegedly informed the Council that it was acceptable to use grant funds "to address social service needs of parents." The Council argued that, since then, ACF had approved its grant applications and budgets, which included a line item for "social service funds to meet documented emergency or crisis

assistance when no other resources can be found.” Moreover, according to the Council, this budget item had never been questioned by the Council’s independent auditors or federal program reviewers

However, the DAB concluded that neither the Head Start statute nor Head Start regulations authorize the use of federal Head Start funds as cash assistance to pay for rent, utilities or other costs of families in crisis. Instead, Head Start grantees are to help Head Start families in crisis to identify and access services and resources to meet their needs. The Head Start statute refers to the provision of “health, educational, nutritional, social and other services that are determined, based on family needs assessments, to be necessary.”³ The Head Start performance standards state that Head Start grantees and delegate agencies must work with parents “to identify and access, either directly or through referrals, services and resources that are responsive to each family’s interests and goals, including ... emergency or crisis assistance in areas such as food, housing, clothing and transportation...”⁴

The DAB noted that it did not have the authority to reverse the disallowance on the ground of “equitable estoppel” – in other words, on the ground that the Council had reasonably relied, in good faith and to its detriment, on the statement of a federal government employee that the costs were allowable. The DAB questioned whether an equitable estoppel argument can ever be used successfully against the federal government. It noted that the only case in which such an argument could possibly be used is where there is “affirmative misconduct” by the federal government. The DAB observed that even if the Head Start employee had stated that Head Start funds could be used “to address social service needs of parents,” this statement was not evidence that the employee intentionally misled the Council. In fact, the DAB noted that the statement was not inconsistent with the Head Start Act or regulations, which require Head Start grantees to help families identify and access resources to meet their food, housing and other expenses in times of emergency or crisis.

The DAB also explained that ACF’s approval of the Council’s prior Head Start budgets including expenses for cash assistance did not provide a basis to prevent ACF from later disallowing those expenses. The DAB noted that it was not clear whether the Council’s prior budgets explained the line item for social service funds in enough detail for a reviewer to understand that the Council was using Head Start funds to provide cash assistance. According to the DAB, even if the budget documentation had clearly described the social service fund as a source of cash assistance, ACF’s approval of those budgets would not rise to the level of “affirmative misconduct.” Moreover, the DAB concluded that a federal agency’s failure to disallow unallowable costs in a prior period does not prevent it from disallowing similar costs in a later period. Therefore, the DAB disallowed the Council’s cash assistance expenditures.

Employee Gift Cards

The DAB also affirmed ACF’s disallowance of expenditures for gift cards. The Council argued that it properly used employee morale funds to purchase 96 Wal-Mart gift cards valued at \$25 each, which it distributed to staff from facilities that received or worked toward accreditation from the National Association for the Education of Young Children (NAEYC). The DAB emphasized the fundamental principle that a grantee must document its costs and demonstrate that expenditures are allowable. It observed that the Council had failed to provide any store receipts, cancelled checks, credit card receipts, statements, or other source documentation to show that the gift cards had actually been purchased and no source documentation or other evidence to show that the gift cards had been distributed to the employees. Furthermore, the DAB found that the Council had provided inconsistent evidence as to how many gift cards had been distributed at the different centers. Citing these inconsistencies and the Council’s insufficient recordkeeping, the DAB affirmed the AFC’s decision and disallowed the cost of the gift cards.

Plasma Television

The DAB overturned the disallowance of the cost of the plasma TV, ruling that ACF's decision was based on a flawed factual premise. ACF disallowed the expenditure for the plasma TV on the ground that the plasma TV merely duplicated properties and functions available on another TV located in a training area in the Council's central office building.

In response, the Council provided detailed information on the properties and functions of the new plasma TV and attached equipment, noting that it used the TV as a monitor screen with multiple input devices. The Council also provided source documentation supporting the cost of the TV and attached equipment and a detailed description of how this equipment was used to support its Head Start operations. The Council contended that, although it already had some training equipment and access to training programs, it did not have equipment with all of the properties and functions of its new technology system – specifically, a monitor with multiple input capabilities, including computer, cable, webinars, DVDs and tapes. The Council further asserted that, although the plasma TV and attached equipment were located in the Head Start director's office rather than in the training room, it used this equipment to provide a wide array of necessary training classes, orientation programs, workshops, meetings, and webinar presentations for management and staff that benefit the Head Start program. Citing the detailed information that the Council had provided and the fact that ACF had not provided a description of the equipment it had observed during its on-site review, refuted the Council's characterization of the capabilities of the plasma TV or contended that the Council's existing equipment had the same capabilities, the DAB reversed the disallowance.

¹ This DAB decision is available at <http://www.hhs.gov/dab/decisions/DAB2200.pdf>.

² See Office of Management and Budget (OMB) Circular A-122 ("Cost Principles for Non-Profit Organizations"), codified at 2 C.F.R. Part 230. The specific requirements referred to here are contained in Appendix A, ¶ A. OMB Circular A-122 ("Cost Principles for State, Local and Indian Tribal Governments"), codified at 2 C.F.R. Part 215, contains similar requirements at Appendix A, C.

³ See 42 U.S.C. § 9831 (emphasis added).

⁴ 45 C.F.R. § 1304.40(b)(1)(i) (emphasis added).