



DAB Upholds Head Start Cost Disallowances

Marie Detty Youth and Family Services, DAB No. 2024 (June 14, 2006)¹

*October 2006 CAPLAW Update
By Rafael Munoz, CAPLAW*

The Department of Health and Human Services' (HHS) Departmental Appeals Board (DAB) sustained most of the \$338,471.04 disallowed as costs charged to the Head Start program by grantee Marie Detty Youth and Family Services Center, Inc. (MD) of Lawton, Oklahoma. The Administration for Children and Families (ACF) had concluded that these expenditures were not allowable under the applicable cost principles, statutes, and regulations, as discussed below.

Non-Federal Funds

MD's main argument was that it had added enough non-federal funds to its Head Start program to make up for the unallowable expenditures. MD also argued that some of the disallowed costs were paid with non-federal funds. The DAB, however, rejected both these assertions because MD failed to provide documentation that it used its non-federal funds to pay allowable but unclaimed Head Start costs that could be substituted for the unallowable charges. Moreover, because it commingled non-federal and Head Start funds in its Head Start account, it could not prove that it used non federal funds for some of the disallowed costs.

Christmas Bonuses

The DAB sent back for ACF review part of the disallowance of funds spent on Christmas bonuses after MD produced documentation that suggested some were paid from non-federal funds. However, the DAB sustained the disallowance of funds charged to Head Start because MD didn't award the bonuses pursuant to an agreement with its employees or a consistently followed established plan as required by Office of Management and Budget (OMB) Circular A-122 (A-122) for incentive payments.²

Retirement Contributions

The DAB upheld ACF's disallowance of \$91,689.69 in contributions to a retirement plan because MD didn't make the contributions within six months after the end of each fiscal year as required.³

Medical Care

The DAB affirmed a disallowance of \$1,300.16 that MD used to pay for the medical bills of its executive director's 24-year-old daughter on two grounds. First, MD did not comply with OMB Circular A-122's provisions on fringe benefits and employee morale, health and welfare costs, which provides that federal funds can only be used to pay for the costs of employee insurance and employee first aid clinics or infirmaries.⁴ Second, MD's use of the funds did not meet the general standards of allowability.⁵ MD

failed to prove that this expenditure was reasonable for the performance of the grant award and allocable to the program.

Vehicle Use

The DAB sustained the disallowance of \$1,084.74 for operation of a motor vehicle provided to MD's executive director because he had used the vehicle to commute between work and home. This violated OMB A-122, which prohibits reimbursement of expenses for the personal use of vehicles.⁶ The DAB upheld ACF's disallowance in full since MD failed to provide documentation showing the vehicle's use for business purposes.

Consulting Services

The DAB sustained the disallowance of \$10,000 paid for management consulting services because of a lack of documentation showing that MD's Head Start program received specific services or benefits under the contract and an apparent conflict of interest in selection of the contractor. MD could not show that the cost of the consulting contract was either reasonable for the performance of the grant award, or that it met the requirements of OMB A-122's provision on the allowability of professional consulting and contracting costs.⁷ MD failed to present sufficient information about the consultant's activities, his work product, or benefits to the Head Start program. The DAB also concluded that the selection of the contractor at the recommendation of MD's executive director, who was a board member of the contractor, was inconsistent with grant administrative conflicts of interest rules.⁸

The DAB also upheld a portion of the disallowance of \$16,971.93 that MD paid to another consultant because it failed to show that the fee was a reasonable charge.⁹ Specifically, it did not provide any evidence that it paid the consultant, its former fiscal director, the same amount it would have had to pay for similar services in its geographic area. The DAB sustained a disallowance of \$8,319, the difference between the consulting fee and the amount the former fiscal director would have received at his previous rate of compensation, but reversed the rest of the disallowance.

Office Furniture

The DAB sent back for ACF review part of the disallowance of funds MD used to pay for furniture for its administrative building after the DAB learned that ACF did not consider an exhibit submitted by MD. That exhibit purportedly proved that a greater amount of the furniture's cost was properly allocable to Head Start. However, the board upheld the part of the disallowance that applied to furniture not used for Head Start.

Construction

The DAB upheld the disallowance of \$139,484.40 paid as part of the cost of constructing a building later used as part of the Early Head Start program because MD failed to comply with grant administrative requirements, the Head Start Act and Head Start regulations by not seeking prior approval for the construction costs.¹⁰ MD also failed to document why it did not use a competitive bidding process.¹¹ Moreover, it acquired no ownership or other interest in the facility.¹² The DAB also rejected MD's argument that it paid the questioned costs to the construction contractor on behalf of the landlord in order to reduce its rent.

The DAB concluded that ACF properly denied retroactive approval of the construction costs on the ground that, even if the request had been timely submitted, it would have been denied since it did not meet the requirements. The Head Start facilities regulations specify that grant funds can only be expended on major renovations of real property when the federal government has an interest in the

property.¹³ A grantee may renovate a facility that is located on land it does not own if it shows that there is no alternative, feasible way to provide suitable programming and takes steps to protect the federal interest.¹⁴ However, MD's application did not address these requirements.

¹ This and other DAB decisions are available online at <http://www.hhs.gov/dab/search.html>.

² See OMB Circular A-122, Att. B, ¶ 8.j.

³ See OMB Circular A-122, Att. B, ¶ 8.i.1.d.

⁴ See OMB Circular A-122, Att. B, ¶¶ 8.g.(2), 13.

⁵ See OMB Circular A-122, Att. A, ¶¶ A.3, A.4.

⁶ See OMB Circular A-122, Att. B, ¶ 8.h.

⁷ See OMB Circular A-122, Att. B, ¶ 37.

⁸ 45 C.F.R. § 74.42.

⁹ See OMB Circular A-122, Att. A, ¶ A.3.

¹⁰ 45 C.F.R. § 74.25(b) and 42 U.S.C. § 9839.

¹¹ 45 C.F.R. §§ 74.43, 74.46 (a)-(c).

¹² 45 C.F.R. §§ 74.30-74.32.

¹³ 45 C.F.R. § 1309.21.

¹⁴ 45 C.F.R. § 1309.10(1).