ARC of Salem County,
Petitioner,

v.

New Jersey Department of Labor and Workforce Development,
Respondent.

STATE OF NEW JERSEY
DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT

FINAL ADMINISTRATIVE ACTION
OF THE
COMMISSIONER

OAL DKT. NO LID 11058-14
AGENCY DKT. NO. F13-DVRS#2010-25

Issued: July 10, 2017

The ARC of Salem County (ARC or petitioner) appealed from the decision of the Department of Labor and Workforce Development (Department or respondent) that ARC owes the Department a refund of $38,495.27 resulting from an overpayment to ARC under the sheltered workshop program grant agreement for the period of July 1, 2010 through June 30, 2011. That is, the Department determined that ARC had failed to meet its committed level of service for the contract period and, therefore, demanded that ARC return $38,495.27 in unobligated funds (funds neither expended, nor contracted for, by the grantee, ARC, on or before the contract end date).[1]

Petitioner requested a hearing with regard to the Department's demand for a refund. The matter was transmitted to the Office of Administrative Law (OAL), where it was scheduled for a hearing before Administrative Law Judge (ALJ) Bruce M. Gorman. Prior to a hearing, ALJ Gorman determined that there were no facts in dispute and that the matter, therefore, should be resolved through cross-motions for summary decision.

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[1] The same conclusion was reached by Bowman & Company, LLC (Bowman), an independent firm hired by ARC to perform a single audit of ARC's state and federal grants for the period from 2010 through 2012. Specifically, Bowman concluded on the basis of its audit that $38,495.27 of the sheltered workshop grant is "due to grantor (the Department)."

Prior to hearing of the cross-motions, the matter was reassigned to ALJ John S. Kennedy. ALJ Kennedy reviewed the submissions of the parties and concluded that the Department had a right under the grant agreement to recover $38,495.27. In so finding, the ALJ expressly rejected petitioner's waiver argument, explaining:

> Here, there is no evidence that [the Department] waived any of its contractual rights. [The Department's] failure to assert its contractual right to a refund in prior contracts is not enough to demonstrate intent to waive those rights. To the contrary, when the grant agreement was transmitted to the ARC on September 17, 2010, [the Department] explicitly reserved the right to demand a refund:
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> > Under the terms and conditions of this contract, all funds must be obligated (expended or contracted for) on your records by June 30, 2011...Any funds which are not legally obligated by that date will be recovered by the Department of Labor and Workforce Development.

Therefore, again, the ALJ concluded that the Department had properly assessed ARC for a refund of $38,495.27 under the terms of the sheltered workshop program grant agreement between the Department and ARC for the period of July 1, 2010 through June 30, 2011. Exceptions were filed by petitioner. Respondent filed a reply to petitioner's exceptions.

> In its exceptions, petitioner asserts the following:
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> [I]n arriving at his decision, Judge Kennedy does not address whether the remedy already taken by respondent (the pro rata reduction in client slots) may impact [the Department's] right to the refund.
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> Specifically, as a result of its inability to provide the requisite number of client service days for FY2011, and pursuant to Section III of the contract, the ARC's contracted level of service for the FY2012 contract period was reduced by the respondent from 83 clients to 77 clients per day. The record is clear that this particular remedy was taken by the respondent in FY2012 and for each year thereafter. Said reduction in client slots has caused the petitioner to lose a significant amount of its yearly revenue.
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> The main argument asserted by the petitioner since the inception of this litigation has been that the [Department] has already taken its remedy in reducing the number of slots and therefore it would be inequitable for an additional penalty to be assessed against it. Unfortunately, the Judge's decision does not analyze whether the contract allows [the Department] to take both the pro rata reduction, as well as the refund of $38,495.27 against the ARC. In fact, except to quote the relevant contractual language, the court was silent in both its analysis and decision as to the

> pro rata reduction remedy and its inter-relationship to the other remedies outlined in the parties' agreement. Additionally, a question still remains as to whether asserting both remedies would be inequitable and overly burdensome to the petitioner. It is the ARC's position that the [Department] should not be permitted to both reduce slots and demand a repayment.

Respondent replies that, "ALJ Kennedy correctly determined that the Department is entitled to a refund of overpaid grant funds that were not used in accordance with the grant agreement between the parties," adding that the amount due the Department for the overpayment is not in dispute as ARC's own auditor concluded that ARC owes the Department $38,495.27. Specifically as to petitioner's assertion that the ALJ had not considered whether a reduction in ARC's client slots for the subsequent fiscal year should impact the Department's right to a refund based on ARC's failure meet its committed level of service in the then current fiscal year, respondent asserts that this argument "must be rejected because a plain reading of the grant agreement confirms that the Department is entitled to the refund."

CONCLUSION

I agree with both the ALJ and respondent that the Department has the express right under the sheltered workshop program grant agreement for the period of July 1, 2010 through June 30, 2011 to require the refund of monies not obligated (expended or contracted for) by ARC on or before the contract end date. I find unpersuasive petitioner's assertion that the Department's reduction of slots allocated to ARC for the subsequent fiscal year should foreclose the Department from recouping an overpayment caused by ARC's failure to meet its committed level of service in the then current fiscal year. That is, ARC is demanding to be paid for work it readily admits it did not perform. Whether the Department did or did not decide to reduce ARC's slot allocation for the subsequent fiscal year; a decision the Department must make annually relative to each grantee in its management of the sheltered workshop program as a whole, no recipient of grant funds should expect to keep money for services it has not performed. There is no argument, equitable or otherwise, which would justify such an outcome.

ORDER

Therefore, the initial decision of the ALJ is affirmed and the petitioner's appeal is hereby dismissed. Moreover, petitioner is hereby ordered to pay to the Department $38,495.27, the source of which shall be neither federal, nor State funds.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY
THE COMMISSIONER, DEPARTMENT
OF LABOR AND WORKFORCE DEVELOPMENT

Aaron R. Fichtner, Ph.D, Commissioner
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