

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Michigan Department of Social Services
Docket Nos. 78-67-MI-HD, 78-132-MI-HD,
79-67-MI-HD, 79-199-MI-HD
Decision No. 79

DATE: JAN. 31, 1980

DECISION

These are cases that are being considered jointly because they emanate from the same HEW agency and involve the same issue - whether the State may receive Federal financial participation (FFP) at the rate of 75% of the full value of non-expendable personal property which is purchased as part of an indirect cost pool and allocated in part to the Office of Human Development Services (OHDS) or whether the value of the property must first be capitalized and depreciated. The principal issue in these cases is parallel to that discussed in our decisions in 78-70-MI-CS and 79-159-MI-CS (Decision No. 76), 78-158-MI-SS (Decision No. 77), and 78-27-MI-HC, 78-116-MI-HC, 79-45-MI-HC, and 79-46-MI-HC (Decision No. 78).

Procedural Background

By letters dated June 22, 1978 (78-67-MI-HD), September 18, 1978 (78-132-MI-HD), March 1, 1979 (79-67-MI-HD), and September 12, 1979 (79-199-MI-HD), Eli Lipschultz, Regional Program Director, APS, OHDS, notified the Michigan Department of Social Services (DSS) of disallowances of \$31,049 (78-67-MI-HD), \$27,374 (78-132-MI-HD), \$34,141 (79-67-MI-HD), and \$9,605 (79-199-MI-HD) for the cost of equipment and furnishings in excess of \$300 per unit purchased under Title XX of the Social Security Act for the quarters ended December 31, 1977 and March 31, 1978 (78-67-MI-HD), June 30, 1978 (78-132-MI-HD), September 30, 1978 (79-67-MI-HD), and March 31, 1979 (79-199-MI-HD). The DSS filed applications for review on July 20, 1978 (78-67-MI-HD), October 6, 1978 (78-132-MI-HD), March 31, 1979 (79-67-MI-HD), and October 12, 1979 (79-199-MI-HD). Since there had not been requests for reconsideration before March 6, 1978, the disallowances having been made after that date, the appeals proceeded under 45 CFR Part 16 (1978).

An Order to Show Cause was issued on September 26, 1979 in 78-67-MI-HD, 78-132-MI-HD, and 79-67-MI-HD, and the responses to the Orders for 78-70-MI-CS and 78-158-MI-CS were incorporated into the files for all four cases, without objections from the parties.

Relevant Statutory and Regulatory Provisions

Section 2002(a)(1) of Title XX of the Social Security Act states:

From the sums appropriated therefor, the Secretary shall... pay to each State, for each quarter...75 per centum of the total expenditures during the quarter for the provision of other services...including expenditures for administration...

The general implementing regulations for the Title XX program can be found at 45 CFR 201 et seq. (October 1, 1977). Section 205.160 addresses the treatment of non-expendable personal property.

45 CFR 205.160(a)(1) states that items of non-expendable personal property costing less than \$5000 per unit may be subject to FFP in full at the option of the Title XX agency in the State. This is subject to an exception in Section 205.160(a)(3) which concerns the treatment of property acquired by organizational elements treated as indirect cost centers or pools in an SRS cost allocation plan. In these situations, non-expendable personal property costing over \$300 must first be capitalized and depreciated (or be subject to a use allowance). The grantee receives FFP at a rate equal to 75% of the depreciation expense.

45 CFR 74.132 defines non-expendable personal property as:

"tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit..."

45 CFR 201.5(e) states that 45 CFR Part 74, except for Subparts G (Matching and Cost Sharing) and I (Financial Reporting), is applicable to all Title XX grants.

Both the statutory and regulatory provisions relevant in these cases enunciate the same basic principles as those provisions relevant in our Decision Nos. 76, 77, and 78.

Issues Raised by the Parties

The arguments raised by the State are the same as those raised in Decision Nos. 76, 77, and 78.

The Agency has argued that 45 CFR 205.160 expands and interprets Section 2002(a)(7) of the Social Security Act, which excludes reimbursement of expenditures for the "purchase, construction, or major modification of any land, building or other facility, or fixed equipment." The Agency has contended that the statute is silent as to the manner and amount in which payment can be made to states for capital expenditures, and that the regulation fills in this gap. Although we do not find this argument persuasive, we conclude, for the reasons stated in our earlier decisions on this subject, that the regulation is valid.

In response to the State's argument that 45 CFR 205.160(a)(3) contradicts Section 2002(a)(1) of the Social Security Act and is therefore invalid, the Agency has argued that the Board lacks "jurisdiction or authority to alter, amend, or revoke any formally promulgated policies" of OHDS. A determination on this question is unnecessary under the circumstances of

these appeals since we conclude that 45 CFR 205.160(a)(3) is a reasonable interpretation of the statute.

Conclusion

It is our opinion, for the reasons stated fully in Decision Nos. 76 , 77 , and 78 , that 45 CFR 205.160(a)(3) does not contradict the wording of Section 2002(a)(1) of the Social Security Act and that the regulation imposes a commonsense method for payment of the appropriate federal share of costs for non-expendable personal property.

Accordingly, we deny the appeals and affirm the disallowances of \$31,049, \$27,374, \$34,141, and \$9,605. This decision constitutes the final administrative action on these matters.

/s/ Bernard E. Kelly

/s/ Thomas Malone

/s/ Malcolm S. Mason, Panel Chairman