

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Utah Department of Social Services
Docket No. 79-113-UT-HD
Decision No. 178

DATE: May 27, 1981

DECISION

Background

After receiving an extension of time, the Utah Department of Social Services (State) filed an application for review on July 3, 1979 of the May 15, 1979 disallowance of \$32,320 in Federal financial participation (FFP) in Title XX training costs. The disallowance was made by the Acting Regional Program Director, Administration for Public Services, Office of Human Development Services (Agency).

Only \$21,895 pertaining to the contract between the State and the Granite Community Mental Health Center of Salt Lake County (Center) remains in dispute. The other issues have been disposed of by the parties, so that the remainder of the disallowance is no longer under consideration by this Board.

This decision is based on the State's application for review, the Agency's response to the appeal, both parties' responses to a request for clarification of the issues in dispute, the Board's Order to Develop the Record, both parties' responses to the Order, and the transcript of a telephone conference held among the parties and the Panel Chair.

The central issue in this appeal is whether, for the purposes of claiming training costs under Title XX of the Social Security Act, the Center is included in the definition of State agency or is a provider agency.

The contract in question was with the Center's Minority Human Services Training Program. According to the Agency's audit review (PSD-UT-78-2), in accordance with this contract, five individuals were selected by the Center for training relevant to the delivery of Title XX services. The agreements between the County and the trainees provided that the trainees would be eligible for employment in a county agency when the course work was completed and would be required to accept employment if offered by the County. The Agency has asserted, and the State has not denied, that the trainees were not employees of the Center but rather were persons preparing for employment with the Center.

Discussion

Section 228.70(a) of 45 CFR provides that FFP is available in the costs of purchased services only when the State agency has executed a written contract (purchase of service contract) "with the agency, individual, or organization from which services are purchased." The "agency, individual, or organization from which services are purchased" is termed a provider. Section 228.70(a)(3), (4), (6), (7), (10), (11) and (d)(1) and (2). The provider agency may be either public or private. Section 228.71(a). FFP is available in the costs of training in accordance with Sections 228.80 et seq. These sections distinguish between a State agency and a provider agency. In particular, Section 228.81 states that FFP for training provider agency personnel is available only if there is a purchase of service contract in effect.

Section 228.84(d) sets forth the FFP available if the trainees are preparing for employment with the State agency. If the Center is classified as a provider agency, only the costs enumerated in Section 228.84(e) are available for FFP and the disallowance must be upheld since FFP is not available for training costs for individuals preparing for employment with a provider agency.* The Agency argues that the Center is a provider agency and is not included in the definition in Section 228.1 of "State agency" as a local agency "administering the program under the supervision of the State agency." The State admits (Conference Call Transcript, p. 9) that "the Regional staff have appropriately interpreted that regulation [Section 228.1]."

As will be discussed below, we conclude that the Center was a provider agency and not a State agency and that the contract between the State and the County (for the Center) under which the County provides Title XX services was a purchase of service contract under Section 228.81.

Under Utah law, the State has no authority to provide direct mental health care (except in the State mental hospital). Direct mental health care is provided by local mental health authorities.

The Center was not only providing direct Title XX services in accordance with Section 26-17-13 of the Utah Code (Conference Call Transcript, pp. 4-5) but was also training future mental health workers under the contract in question here. Section 26-17-13 states that:

*Regulations in effect prior to those cited by the Agency and used in this decision (which became effective January 1, 1977) were applicable during part of the time the contract in question was in effect (although by the time the contract was executed by State and County officials, the regulations cited were in effect). This decision's result would not be changed if those prior regulations were to be applied.

the local mental health authority is authorized to enter into a contract with the Division of Mental Health for community mental health services to be furnished by such local mental health authority for agreed compensation to be paid by the State....

The Center is operated by the Salt Lake County Department of Social Services as part of the mental health services delivery system in Utah.

The contract used to provide for services is called a "purchase of service" contract by the State (Conference Call Transcript, pp. 6-7). Funds are provided to the Center on a reimbursement basis based on bills sent to the State. Ibid.

The State admits that it used basically the same contract form for both the training contract and the Title XX services contract. The former is also called a "purchase of service" contract by the State (Conference Call Transcript, pp. 6-7).

The Title XX regulations provide that a purchase of service contract must comply with Subpart G of Section 228. A review of Subpart G, Section 228.70(a)(1) through (13) reveals that the contract between the State and County under which the County provides Title XX services comports with its requirements. For example, Section 228.70(a)(13) requires that the provider give access to financial and other records to State and Federal officials. Part B of the contract between the State and County states that the County agrees to "allow State and Federal auditors to make audits and inspections of all records relating to this contract and allow STATE to evaluate services provided under this contract using the approved plan as a guide."

In arguing that the County should be regarded as part of the State agency so that FFP would be available in the costs in question here, the State has not shown that there is any significant State involvement in the day-to-day activities of the County with regard to the services provided and the employees that provided them. The absence of such a showing bolsters our conclusion that the statutory provisions in Utah anticipate the arms length purchase of services by the State from the local mental health authorities, so that the County is a provider agency.

Despite the State's admission that the Agency has correctly interpreted the regulations to exclude the County from the definition of State agency, the State's representative has noted that "the reason that we chose to appeal this to the Grant Appeals Board is because we think that the regulation is onerous [in denying FFP for costs incurred by a provider agency to train prospective employees] in the sense that it totally ignores the way in which the world operates at least within Utah" (Conference Call Transcript, p.9). But in the absence of any showing that the regulation is

invalid, the Board must apply it. 45 CFR 16.8. The State's arguments regarding why the regulations should be substantively changed should be made to the Agency (See Panel Chair's response to this point, Conference Call Transcript, p. 10).

In summation, the evidence provided by both parties supports the Agency's position that the Center is not part of the State agency and is, for Title XX purposes, a provider agency. FFP in costs attributable to the training contract between the County and the State, therefore, was properly disallowed.

Conclusion

For the reasons stated above, the disallowance pertaining to the Granite Community Mental Health Center is upheld.

/s/ Norval D. (John) Settle

/s/ Alexander G. Teitz

/s/ Cecilia Sparks Ford, Panel Chair