

DEPARTMENTAL GRANT APPEALS BOARD

The Department of Health, Education, and Welfare

SUBJECT: Community Action Agency DATE: July 5, 1977
 of Memphis and Shelby County
 Docket No. 76-9
 Decision No.

DECISION

The Community Action Agency (CAA) created jointly by the City of Memphis and Shelby County, Tennessee, was awarded Grant No. H-3447 for the operation of several Head Start programs, financed under the Economic Opportunity Act of 1964. This appeal involves disallowances made after an audit of activities under the grant for the program year ending December 31, 1974.

Many of the items initially questioned for 1974 were allowed by the Office of Regional Comptroller and the Audit Appeal Board of the Office of Human Development, after they considered CAA's responses to the audit report. Disallowances totalling \$28,008, however, were still imposed and CAA has appealed them to this Board.

We must also consider the determination by the Office of Human Development that the expenditures charged to the federal grant under Program Account No. 23 are \$25,315 in excess of the \$951,118¹/₇ maximum authorized under that account. That determination did not require additional adjustment because after the disallowance of \$28,008 of individual expenditures the amount of federal grant was within the authorization. The question of whether the maximum would have been exceeded had there been no audit disallowance must be resolved, however, before substantial relief can be granted to CAA. If excess expenditures were

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1. This amount is used in the audit report and other documents in the file. A Regional Office representative also stated the slightly larger amount of \$951,358 as the maximum. It is not necessary for us to ascertain which figure is correct.

charged to the federal grant account, as the Regional Office found, allowance of the entire \$28,008 of the individual expenditures would enable the grantee to receive only an additional \$2,693 of federal participation within the maximum authorization of \$951,118. Stated another way, CAA cannot obtain relief here if we determine, (1) that the \$25,315 is in excess of the authorization for federal participation under Program Account No. 23, and (2) at least \$2,693 of the \$28,008 disallowance made by the Regional Office was proper.

I. Maximum Authorized Federal Participation

The CAA does not disagree with the figures showing a claim in excess of the maximum federal participation which was authorized but asks that consideration be given to the fact that in another activity it had an unused balance of \$106,451. This Board will not engage in grant administration by transferring authorizations from one account to another, at least in the absence of a showing that the administering officials arbitrarily refused to make such a transfer. No such showing has been made. Accordingly, we cannot here consider the fact of unused authorizations in other accounts.

As a second basis for relief, CAA asserts that the records do not accurately reflect how the expenditures should have been charged. This came about, according to CAA, because it was administering several activities when it used a manual accounting system during the first five months of 1974. The Head Start Director was asked to identify the account to which each expenditure should be charged, but refused to do so after January. As a result, CAA has no doubt "that \$25,315 or more was charged to the full day program that should have been charged to other programs. We know for a fact that if a source document (invoice) did not specify which program, it was charged to full day."

This Board's Order to Clarify the Record on March 7, 1977 requested more information on that point and the grantee responded that it could not provide more detailed estimates of what costs might have been improperly charged to the account involved. Obviously, a grantee which seeks to question the accuracy of its own records based on the refusal of its own employees to follow orders has a greater burden of specificity than has been met here where CAA has only offered its opinion that in excess of \$25,000 of expenditures were charged to the wrong account.

We find no basis for changing the determination that the claimed federal participation was in excess of the maximum authorized.

II. Individual Disallowances

As already stated, if individual disallowances in excess of \$2,693 are proper, CAA cannot be given any relief in this appeal. In this connection, we find that the Regional Office properly disallowed \$13,924 of personnel costs as involving excessive starting salaries. We adopt here the position taken in the Board's Order to Clarify the Record dated March 7, 1977, that the payments exceeded those permitted under applicable grant policy. The Order, however, raised the question whether the exception under CA Memorandum 23-B (OEO Instruction No. 6900-2) is applicable. That exception applies where the employees of a grantee are under a merit system, fill types of positions in existence before the OEO grant was made and the salary scale was not changed as a result of the grant. Information furnished as a result of the Order shows that the exception is not applicable here because the positions involved are not of a type that previously existed under the merit system. (It appears, although it is not entirely clear, that the employees are not covered by the pay scales of the merit system. That however, is immaterial in view of what already has been stated.2/)

2. CAA's response to this Board stated:

"Headstart personnel were subject to City Civil service regulations. This was evidenced by Mrs. Ann Hollerman being reinstated to the Headstart program after taking her grievance over being terminated to the Civil Service Committee. The position or types of position did not exist prior to the grant being awarded."

No purpose, precedential or otherwise, would be served by a discussion of the disallowances of other individual expenditures.

CONCLUSION

The disallowance of \$28,008 was proper.

/s/ Bernice L. Bernstein

/s/ Thomas Malone

/s/ Edwin Yourman, Panel Chairman