DEPARTMENTAL APPEALS BOARD

Department of Health and Human Services

SUBJECT: Missouri Department of Social Services
Docket No. 87-188
Decision No. 1021

DATE: February 21, 1989

DECISION

The Missouri Department of Social Services (State) appealed a disallowance by the Administration for Children, Youth and Families (ACYF, Agency) of federal financial participation (FFP) claimed under Title IV-E (Foster Care) of the Social Security Act (Act). ACYF disallowed $5,511,265 in FFP in claims for Title IV-E administration and training costs for the period January 1, 1983 through September 30, 1984 because expenditures prior to July 1, 1984 were claimed under a Cost Allocation Plan (CAP) amendment that did not become effective until July 1, 1984 and because expenditures for the entire period at issue were determined by an improper estimate that was not sanctioned by the amended CAP, regardless of when it became effective.1/

1/ ACYF had also disallowed certain IV-E administrative and training costs incurred in FY 1985. In the course of this appeal the Agency suggested that the allowability of costs for FY 1985 should be severed from this appeal. The Agency explained that two Board decisions (discussed below in the Procedural Background Section) will essentially govern any questions concerning those costs so that the parties should be able to resolve them informally. Respondent's Pre-Hearing Statement, p. 2, fn. 1. The State agreed, subject to certain understandings, that FY 1985 costs should be severed from this proceeding. Appellant's Pre-Hearing Statement, p. 5. In the course of the hearing and later submissions, the parties restricted their arguments to the costs claimed by the State for FYs 1983 and 1984. Accordingly, this decision is restricted to the allowability of claims for those years and the parties should attempt to resolve claims for subsequent periods based on the Board's previous decisions. If the parties are unable to resolve the FY 1985 costs informally, the Agency should issue its decision as soon as reasonably possible, and the State will have 30 days thereafter to appeal to the Board.

For reasons described below, we uphold the disallowance in full. The State's CAP amendment became effective July 1, 1984 (consistent with what the State itself had proposed) and cannot support any of the questioned claims for expenditures that preceded that date. Furthermore, the applicable regulations would not authorize an earlier effective date for the State's CAP amendment under the circumstances here. Finally, even if the State's CAP had been effective January 1, 1983, as the State now asserts, it would not have authorized the methodology the State used here in computing its claim for the entire period from January 1, 1983 through September 30, 1984. Moreover, the State was unable to demonstrate that the methodology actually used by it would have achieved the same results as the methodology authorized by the amended CAP provisions.

Procedural Background

This disallowance resulted from a process that began when the State, already having an approved CAP for administrative and training expenditures associated with the provision of Title IV-E services, submitted, on September 25, 1984, an amendment to its CAP to the Region VII Division of Cost Allocation (DCA) of the Department of Health and Human Services (Department, DHHS). The State proposed an effective date of July 1, 1984 for its amendment. (This date was the first day of the calendar quarter in which the amendment was proposed.) The proposed CAP amendment concerned the time study coding of certain administrative activities performed by social workers so that the activities could be charged to the IV-E program. While the proposed CAP amendment was being reviewed by DCA, the State, realizing that the two-year deadline for filing claims imposed by section 1132(a) of the Act was approaching, submitted in early 1985 claims for IV-E administrative and training expenditures for the quarters ending March 31, 1983 through December 31, 1984. The claims for the period January 1, 1983 through September 30, 1984 were derived from random day logs the State took from August 15 through September 28, 1984.

On May 29, 1985, the Director, DCA, rejected the proposed amendment, finding that the definitions used for the time study codes charged to the IV-E program included unallowable social services which should be allocated to other programs under the Act. While the DHHS Regional Director was reviewing the DCA's rejection of the original

CAP amendment, the State submitted a revised amendment to the DCA Director. The revised amendment retained the new time study methodology but deleted the disputed provisions and was approved by the DCA Director with the same effective date that the State had requested for the original proposed CAP amendment--July 1, 1984.

When the DHHS Regional Director sustained the rejection of the original CAP amendment, the State appealed that disapproval to this Board. In Missouri Dept. of Social Services, DAB No. 844 (1987), the Board held that the activities contemplated by the original amendment, if properly defined by the State, could be reimbursable under the IV-E program as administrative costs. The effective date of the amended CAP was not in dispute and thus became, as the State had originally requested, July 1, 1984.

Before the Board had issued DAB No. 844, ACYF disallowed the claims submitted by the State based on the amended CAP provisions, and the State then appealed that determination to the Board. The disallowance raised the following issues: 1) whether the State's claims were barred by the State's actions in applying initially to transfer IV-E funds to the Title IV-B program; 2) whether claims based on the State's amended CAP for the period prior to July 1, 1984 were precluded because the CAP's effective date was July 1, 1984 and 3) whether the State's claims for the entire period (January 1, 1983 through September 30, 1984) were in any event precluded because they were not made pursuant to the terms of the CAP amendment and were instead based on an impermissible estimate. With the agreement of the parties, the Board delayed its consideration of issues two and three to decide the question of the effect of the State's initial request to transfer IV-E funds to Title IV-B. The parties agreed that a Board decision on that issue in favor of the Agency would render moot the other two issues. The Board subsequently found, however, in Missouri Dept. of Social Services, DAB No. 902 (1987), that the State's claims here were not barred by its actions in applying initially to transfer IV-E funds to the IV-B program.

Consequently, the two issues left unresolved by DAB No. 902--which concern the effective date of the CAP amendment and the State's adherence to the terms of the methodology of the CAP amendment--remain to be decided. After settlement discussions between the parties proved unsuccessful, the parties submitted briefs and participated in a hearing on these issues.

I. The Effective Date of the CAP Amendment

Background on the Cost Allocation Plan Process

A state participating in the various categorical programs under the Act, including Title IV-E, is required to make determinations as to the amount of expenditures benefitting more than one program, such as salary costs, that are allocable to each program the state administers. A state is required to submit a plan for cost allocation to the Director, DCA, in the appropriate DHHS regional office. 45 C.F.R. 95.507(a). This cost allocation plan is defined as "a narrative description of the procedures that the State agency will use in identifying, measuring, and allocating all State agency costs incurred in support of all programs administered by the State agency." 45 C.F.R. 95.505. The CAP must contain sufficient information to permit the DCA Director to make an informed judgment on the correctness and fairness of the state's procedures for identifying, measuring, and allocating all costs to each of the programs administered by the state agency. 45 C.F.R. 95.507(a)(4). Finally, 45 C.F.R. 95.517 provides that a state must claim FFP for costs associated with a program only in accordance with its approved cost allocation plan.2/

The general rule establishing the effective date of a CAP amendment is set forth at 45 C.F.R 95.515:

> [T]he effective date of a cost allocation plan amendment shall be the first day of the calendar quarter following the date of the event that required the amendment (See section 95.509).

Thus, this regulation clearly demonstrates the prospective nature of a CAP amendment and suggests that a CAP generally would be changed following an "event" requiring an amendment. The regulations (section 95.509)

2/ That section also provides that, where a state has claimed costs based on a proposed plan amendment, the state, if necessary, shall retroactively adjust its claims in accordance with the plan amendment as subsequently approved.

specifically list the following events that would require a CAP change:

-- procedures in the existing CAP become outdated because of organizational changes, changes in federal law or regulation, or significant changes in program levels;

-- a material defect is discovered in the CAP;

-- a state's plan for public assistance is amended so as to affect the allocation of costs; or

-- other changes occur which make the CAP invalid.

Finally, section 95.515 lists limited circumstances where the effective date of an amendment may be earlier or later than the event requiring the amendment:

> (a) An earlier date is needed to avoid a significant inequity to either the State or the Federal Government.
>
> (b) The information provided by the State which was used to approve a previous plan or plan amendment is later found to be materially incomplete or inaccurate, or the previously approved plan is later found to violate a Federal statute or regulation. In either situation, the effective date of any required modification to the plan will be the same as the effective date of the plan or plan amendment that contained the defect.

Analysis

The short answer to the State's claim for the period January 1, 1983 through June 30, 1984 (i.e., all but the last quarter of the disallowance period) is that it was not computed based on the cost allocation plan in effect for this period. In the State's claim for that period, it attempted to apply a methodology set out in an amendment to its plan that became effective July 1, 1984.3/ Since

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3/ While the State had proposed an original and then a revised amendment (to cover itself if the disapproval of the original amendment was ultimately upheld), we are here effectively concerned with the original amendment provisions since the Board's decision in DAB No. 844 generally upheld the State's original proposal.

that amendment was not given an earlier effective date, the State was not authorized to use the particular methodology it did, and its claim must be disallowed. 45 C.F.R. 95.517 clearly only permits federal funding for costs claimed in accordance with an approved cost allocation plan.

It is particularly noteworthy in this regard that the State's original amendment proposal specified an effective date of July 1, 1984. This date was the first day of the calendar quarter in which the State's amendment was proposed. When the Agency disapproved elements of the original proposal, the State subsequently proposed an amendment with a methodology acceptable to the Agency while it pursued its appeal of the original proposal. That amendment was approved effective July 1, 1984. When the State prevailed generally in its appeal of the original proposal, those changes were approved effective July 1, 1984, consistent with what the State had originally proposed. There is no evidence in the record that the State ever disputed the effective dates approved by the Agency or that it appealed the Agency's decisions in this respect. Thus, the effective date of the State's amended CAP must stand as approved. See 45 C.F.R. 95.513.

It is therefore clear that the disallowance for the six-quarter period preceding July 1, 1984 must be upheld since the State's claim was not based on the CAP methodology in effect for the period. The State nonetheless argued that its CAP amendment should have been approved with a January 1, 1983 effective date under the circumstances here. While this issue is not technically before us since the State never appealed the effective date of its CAP amendment pursuant to the procedures under 45 C.F.R. Parts 75 and 95, we nevertheless consider the issue in view of the considerable amount of effort expended by the parties in briefing it. We conclude below that the regulations would not have authorized an earlier effective date.

In support of its position that the CAP amendment's effective date should have been January 1, 1983 and not July 1, 1984, the State cited the exceptions in the regulations to the rule requiring a prospective date. The State contended that if the CAP amendment is not applied retroactive to January 1, 1983, the State would suffer a significant inequity in being denied millions of dollars to which it would otherwise be entitled under the Act. According to the State, its original CAP was materially incomplete because it failed to allocate all allowable IV-E administrative and training costs to the IV-E

program. The State claimed that its discovery that the original CAP did not identify and allocate all IV-E administrative and training costs prompted the State to seek a CAP amendment. The State pointed out that the Act, at section 474(a), expressly provides that a state shall be entitled to federal reimbursement for expenditures incurred in the administration of the IV-E program; furthermore, the Act, at section 1132(a), permits a state a two-year period to identify and claim FFP for IV-E expenditures. Accordingly, the State reasoned that the combination of these two provisions gave it the right, when it filed its claims in 1985, to have the defects in the CAP corrected to an effective date of January 1, 1983.

The general rule in the regulations is that a CAP amendment goes into effect prospectively following the event that gave rise to the amendment. Specifically, the regulations provide that the amendment would be effective with the first day of the calendar quarter <u>following</u> the date of the event. Under the circumstances here, there was no particular event requiring an amendment other than the State's actual CAP proposal to the Agency. This in turn was based on the State's realization that a different methodology might enable it to maximize the amount of costs that could be allocated to the IV-E program. The State itself appeared to be relying on the general rule when it proposed an effective date of July 1, 1984 for its CAP amendment. (As we stated above, the record does not demonstrate that the State ever changed its position on the effective date until it brought this appeal following the Agency's disallowance of costs claimed under the new methodology for the period in question.)

The State's position is that either of two exceptions to the general rule requiring prospective effect would apply here. These exceptions permit an earlier or later effective date than the date of the actual event if such a date would be needed "to avoid a significant inequity to either the State or the Federal government" (45 C.F.R. 95.515(a)) or where information provided by the State which was used to approve a previous plan is later found to be "materially incomplete or inaccurate" (45 C.F.R. 95.515(b)). We find that neither exception is applicable under the circumstances here.

In the present case, the event giving rise to the amendment is the State's discretionary decision to modify its methodology to maximize the allocation of costs to one of its programs. Hovis Affidavit, paragraph 4, State Appeal File in Docket No. 86-136, Exhibit (Ex.) G.

Obviously, in proposing CAP provisions which allocate costs among several programs through the use of detailed and often complicated methodologies which make use of statistical sampling, a state has some discretion. While there is no dispute that the State was entitled to fine tune its methodology to maximize its IV-E funding, the issue here is whether the State can do this on a retroactive basis.

The State seems to be arguing that whenever a discretionary change is made that may affect the amount of costs allocated to one or more programs, that should be viewed as rectifying an inequity or inaccuracy. We disagree. Under such an interpretation, the exceptions to the general rule of section 95.515 would engulf the rule itself, since practically every change in methodology would cause some change in the amount of costs allocated to particular programs and would affect the amount of FFP the State received. Moreover, since the State's existing methodology, just as its proposed methodology, is a permissible methodology within the statute and regulations, we find no basis to conclude that its continued application at least until a new methodology has been proposed would be an inequity. Aside from noting the possible failure of the existing CAP to claim all IV-E administrative and training costs incurred by the State, the State has not challenged the Agency's assertion that the original CAP was fully in accord with the Act and applicable regulations.

Finally, we note that there was no action or inaction on the Agency's part that caused the State not to include all possible IV-E administrative and training costs in its original CAP. In a footnote in its Post-Hearing Submission, the State referred to arguments made by the State of Maryland in another appeal before the Board also involving IV-E funds. Maryland alleged that, since its inception, the IV-E program has been burdened with questions because of the Agency's confusion regarding the allowability of various IV-E administrative costs. The Agency responded that allowable IV-E activities were outlined in Title IV-E fiscal regulations issued in proposed form in December 1980 so that Maryland knew or should have known what IV-E activities should have been included when it submitted its original CAP. In a decision that is being issued concurrently with this decision, the Board agreed with the Agency's position. Maryland Dept. of Human Resources, DAB No. 1020 (1989). At the hearing held in the instant appeal, a State witness testified that what prompted Missouri to submit an

amendment claiming more IV-E administrative costs was the State's own internal administrative review that discovered the costs were going unclaimed. Transcript (Tr.), p. 12. There was no testimony of any Agency action that caused the State not to claim the costs earlier. The fact that the State bears the responsibility for not having proposed the CAP amendment sooner is additional support for applying the general rule requiring prospective effect for the amendment.4/

The State also made certain statutory arguments in support of its position. While the State is correct that section 474(a) of the Act declares that a state shall be entitled to federal reimbursement for IV-E expenditures, that provision is in part implemented by the provisions of Subpart E of 45 C.F.R. of Part 95, which require that expenditures in specified circumstances must be claimed in accordance with an approved CAP. The State did have an approved CAP for the period in question pursuant to which it submitted claims for FFP which the Agency paid. It is only the amended claims, made according to a CAP amendment pertaining to a later time, that the Agency rejected. Section 474(a) does not require that the Agency pay FFP for all the claims that the State could have made under a more artfully worded CAP. Furthermore, the mere assertion of a claim does not qualify the claim for FFP; the claim must be substantiated. We therefore find no support for the State's position that section 474(a) of the Act requires approval of a retroactive CAP amendment. As discussed below in Part II, the State was unable to establish, through an accepted methodology, that it incurred costs attributable to the IV-E program.

Similarly, we find that the two-year deadline for filing claims in section 1132(a) of the Act does not support the

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4/ It is also noteworthy that although the State is arguing that it would be inequitable not to apply the CAP amendment retroactively because it would stand to lose millions in IV-E funds, we simply do not know the impact of the CAP amendment for the retroactive period, since, as we discuss below, the State was not following the CAP procedures during that time and cannot demonstrate therefore how costs would have been allocated by the CAP during that period. Indeed, the likelihood that a retroactive CAP would have to rely on data that is not contemporaneous with the period under consideration is a further factor in favor of narrowly interpreting the exceptions in the regulations.

State's position. As we previously discussed, the Agency has a rule which generally requires that CAP amendments be effective following the event that required the change. In specified exceptional circumstances, an amendment may be effective earlier or later than the event causing the change. To the extent that these provisions indirectly restrict a state's ability to file its claim, they are clearly a reasonable response to the need to have in place complex plan methodologies in order to properly allocate administrative costs between several programs. In any event, as long as a state makes claims that are consistent with the CAP that applies to the particular period covered by the claim, a state still has two years in which to file its claims, so that none of the alleged prerogatives of section 1132(a) would be interfered with.

The Board cases cited by the State for the proposition that a significant inequity would result without an earlier effective date can be readily distinguished from the facts of this case. In Iowa Dept. of Human Services, DAB No. 624 (1985), the Board declared that the Health Care Financing Administration's (HCFA's) refusal to grant retroactive approval to Iowa's amendment of its CAP for allocating Medicaid costs imposed the type of inequity upon Iowa which section 95.515 seeks to avoid. In that case, however, the Board found that the circumstances which led Iowa to fail to include a methodology in its CAP for allocating the particular Medicaid costs in question to specific institutions providing Medicaid services were caused in part by HCFA's failure to issue guidelines to Iowa on the scope of those particular costs. Here, as we have already stated, there was no such action or inaction on the Agency's part.

In Oklahoma Dept. of Human Services, DAB No. 963 (1988), the Board examined whether there were circumstances sufficiently compelling to warrant retroactively changing Oklahoma's CAP's methodology for claiming various IV-E costs, finding that a CAP could not be binding upon the parties if the CAP conflicted with the Act or regulations. There is nothing in the facts of this appeal to warrant a finding that the original CAP was in conflict with the Act or applicable regulations.

In conclusion, we find that the exceptions listed at section 95.515 allowing an earlier date of a CAP amendment are not available to the State under the circumstances of this appeal.

II. The sampling methodology required by the amended cost allocation plan

The Agency's second basis for the disallowance, which concerned the entire period at issue (from January 1 1983, through September 30, 1984) was that the State's claim was not made pursuant to the provisions of the amended CAP regardless of whether that CAP could be said to be in effect for the period. The CAP amendment called for the State to perform random daily samples of administrative and training costs for each quarter, yet the State admittedly did not begin to perform samples until August 1984. The CAP also called for the State to meet certain corollary requirements relating to the sampling process. Obviously the State, by not performing any samples until August 1984, failed to meet these corollary requirements as well. The State's claim for the entire seven-quarter period was based on random daily samples taken between August 15 and September 28, 1984. The reliance on the results of a 45-day period for a claim covering seven quarters obviously violates the terms of the amended CAP the State wishes the Board to apply. The reliance on specific random daily samples in each working day of the quarter is one of the most important terms of the CAP amendment. The State instead projected backwards for a seven-quarter period based on its experience during the 45-day period.

Thus, even if the amended CAP had been effective for the period beginning January 1, 1983, as a practical matter, the State would not have complied with its most critical terms. As we stated previously in this decision, 45 C.F.R. 95.517 provides that a state must claim FFP for costs associated with a program only in accordance with its approved cost allocation plan. The State's claim for the entire period at issue is not even in accordance with the cost allocation plan that the State would have us apply. Thus, for this reason, in addition to the effective date issue previously discussed (which applies only to the period prior to July 1, 1984), this disallowance must be upheld.5/

5/ Thus, the claim for the quarter beginning July 1, 1984 does not comply with the terms of the approved plan, which went into effect for that quarter. That plan required a random daily sample for every working day in the quarter, not just for half of the quarter. Moreover, as we explain in the text below, the State's failure was clearly not

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The Agency also asserted that, aside from the fact that the State's claim was not made pursuant to the actual methodology set by its amended CAP, the claims were in any event based on improper estimates of costs from prior periods and could not reasonably be expected to duplicate the results that would have been achieved by the terms of the amended CAP for that period. We agree that under the circumstances of this case, the claims were based on an improper estimate that could not reasonably be said to duplicate the methodology of the amended CAP.

The Agency contended that the State's sample violates what it asserted was a basic tenet of statistical sampling: a sample is valid only when it is drawn from a known universe of data; or, in other words, a sample applies only to that population which has been sampled. According to the Agency, the State is attempting to apply sample results retroactively to a population that obviously was not the same population as that covered by the sample. The Agency argued that what the State did--gathering data from half of one quarter and "backcasting" that data into prior quarters--amounts to nothing but a subjective guess. Given the millions of dollars at stake here, the Agency urged the Board to reject such guesswork.

The State replied that the Agency, in rejecting the proffered results from the sample, is acting in a totally arbitrary, capricious, and unreasonable manner. The State asserted that it is undisputed that the State did not receive a substantial portion of the IV-E funds to which it would otherwise have been entitled during the period in question. According to the State, the results from the August 15 to September 28, 1984 are inherently reliable as a means of determining the unclaimed costs for earlier quarters. The State contended that the results were based upon known data obtained in a State agency and program which have not changed in their constituency, organizational goals, and objectives over the years. State personnel testified that from quarter to quarter the State's IV-E program was free of any significant changes so as to allow the sampled results to be reliably applied for prior quarters. According to the State, subsequent

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technical in nature, but because of the unique circumstances surrounding the latter half of this quarter, could be expected to cause a significant departure from the results that might otherwise have been obtained.

samples taken for quarters after September 30, 1984 have verified that the results of the August 15 to September 28, 1984 sample have been constant over time. The State referred to several instances in which the Department permitted states to apply time studies retroactively and emphasized that the Agency, by refusing to propose any acceptable alternative method for determining the State's IV-E costs during the questioned periods, was acting particularly unreasonably.

At the hearing held in this appeal both parties produced experts in statistics to support their respective positions. The Agency's two expert witnesses were adamant in their assertions that, under proper statistical sampling methods, results from one time period cannot be properly applied to a population from another time period that was never sampled. The Agency's witnesses also faulted the State for its failure to take into account in the sample results a non-response factor (the failure of State employees to turn in random day logs) and to calculate a sampling error to give credibility to the sample results. The State's witness, on the other hand, testified that retroactive application of the data from the August 15 to September 28 sample was accurate and equitable under the circumstances of this appeal. The State's witness cited the proximity of the questioned quarters to the sample period and the high probability that there were few significant variations between the periods.

In several appeals raising the question of whether sample results can be applied retroactively to earlier, unsampled periods, the Board adopted a view on the use of such results that is less rigid than that espoused by the Agency. In California Dept. of Health Services, DAB No. 666 (1985), the Board permitted California to claim enhanced funding for abortions paid for between 1972 and 1977 based on data acquired in 1977 and 1978. The Board noted that the parties in that appeal had concluded that data from the 1977-1978 period would be the best available evidence for identifying what services in the earlier period were for family planning and had agreed that there were no significant differences between the periods to make use of the later period inappropriate. Id., p. 2.

In Ohio Dept. of Human Services, DAB No. 900 (1987), the Board declared, at page 11:

> While sampling in its purest form envisions samples from the same period in question, common sense would

> dictate that samples from another period may be used if it can be established that no substantial change has occurred so as to invalidate the procedure.

Unlike California, the Agency in Ohio did not agree that there were no significant differences between the periods in dispute. The Board went on to find that Ohio had not produced sufficient evidence to support its position that its social service program in question had remained so constant that there were no significant differences between the data from the audited period and other periods. See also Washington State Dept. of Social and Health Services, DAB No. 924 (1987).

The Board's analysis therefore permits sample results from one period to be used to support claims from contiguous periods when no better documentation is available, provided that it can be shown that there are no significant differences between the periods. The Board has recognized this approach as an expedient tool, particularly when the parties are in agreement on the need to establish a claim amount. The party asserting the use of data for unsampled periods has the burden of showing that circumstances relating to the sampled and unsampled periods are such that the data can be used for the unsampled period. We are not prepared to state what degree of similarity in circumstances is necessary to support the retroactive application of sampling results or other data; each case must be judged by its particular circumstances. The uncontested soundness of the data provided during the sample period is not sufficient in itself to support the application of the data as support for expenditures made in earlier periods; the conditions surrounding the expenditures must closely approach those in the sampled period.

Here the State claimed that its IV-E program during the period beginning January 1, 1983 was consistent in all major respects to its program during the sampled period. A State witness testified that the State's calculation of its IV-E costs for the retroactive period was based on three components: 1) actual administrative and training costs; 2) actual percentage of IV-E children in care; and 3) percentage of workers' time spent on IV-E activities. According to the witness, only the third component was an estimate based on data from the sampled period. Tr. 9. Another State witness testified that there were no significant changes in the IV-E program between the two periods at issue. Tr. 41-42. Under these circumstances, the State's expert witness testified, the State's

"backcasting" of the sampled period results was "accurate" and "equitable."

While the Agency responded with a list of reasons why the sampled period results were defective and how circumstances between the periods had changed, we find one circumstance in particular (which was largely uncontested by the State) to be fatal to the State's position. In testifying about the IV-E program's constancy between the periods at issue, a State witness declared that seasonal variations do occur in the number of clients receiving assistance. The witness specifically mentioned that when children return to school after summer vacations, reports of child abuse increase as teachers notice children who appear to have suffered abuse or neglect. Yet the six-week period, August 15 to September 28, 1984, that the State purports to show as representative for the seven-quarter period beginning January 1, 1983, is precisely within that seasonal variation. As an Agency witness testified, those six weeks are a unique period unlike any other in the year. Tr. 154. As teachers notice potential cases of abuse and neglect and notify State authorities, the State's IV-E program is bound to increase in activity accordingly. More administrative costs are going to occur as more reports are filed and more cases are investigated. We consider it highly reasonable to conclude, as the Agency insists, that this six-week period is atypical. The State may argue that over time IV-E activities average out, but the fact remains that it is basing its IV-E administrative and training claims covering seven quarters on a period when IV-E activities are likely to be at their highest level.

Aside from this factor, we agree with the Agency that there are a host of other factors related to the State's claim here which raise questions about the appropriateness of its claims for the seven-quarter period at issue. The Agency supplied a number of graphs which showed significant monthly fluctuations over the seven quarters in such areas as incidents of child abuse and neglect and the number of children in alternative care placement. Agency's Post-Hearing Brief, Attachment A. Moreover, the Agency argued that in order to show that no significant change had occurred between periods, the State had to focus on possible substantive changes in <u>other</u> programs covered by the CAP, not merely the IV-E program, as it did here.

Accordingly, we are not persuaded that the Agency's position in this matter is, as argued by the State,

unreasonable. It is a fundamental principle of grants management that a grantee has the obligation to provide documentation to support its claims. New York State Dept. of Social Services, DAB No. 204 (1981); see also 45 C.F.R. 74.61(b), (f), and (g). Thus, where the State proposes to use the results from a sampled period for a much larger retroactive period, it is clearly the State's responsibility to demonstrate that the periods were in all significant respects comparable.

The parties' positions on the retroactive use of sample results also involved the question of whether other agencies of the Department had approved other state CAPs employing such sampling procedures. The State supplied plans from several states which it alleged showed that the Department had no prohibition against the retroactive application of data. State Appeal File Ex. M. The Agency questioned whether the cited CAPs in fact allowed retroactive application of data. At the hearing an Agency witness testified that any approval of such plans by regional offices was in contradiction to ACYF central office policy. The witness admitted, however, that ACYF had not formally announced its policy absolutely prohibiting retroactive application of sampling results until a June 30, 1987 memorandum. Agency Hearing Ex. 1. The witness further testified that the approval of the cited CAPs by regional offices was erroneous and currently being re-examined.

In light of our finding above that significant differences existed between the periods, we do not therefore consider it relevant to the facts of this appeal whether, as the State alleged, other state CAPs utilizing retroactive application have been approved in the past, especially in light of the Agency's vigorous denials of the correctness of any such approval and the lack of information in the record about the particular details of each of those other states' CAPs.

As we said above, the party advocating the use of retroactive sampling has the burden of showing its validity. The six-week period proposed to be used as the norm was admittedly an aberration, a seasonal variation. Other factors also raise questions about the reliability of data from that period as a basis for a claim covering seven quarters. Under these circumstances, we find that the sampled results from the six-week period are not only unrepresentative of the period January 1, 1983 to June 30, 1984, but also unrepresentative of the quarter ending September 30, 1984 in which the sample was taken. The

State has not met the burden of showing that the circumstances between the periods were so constant as to justify the retroactive application of the sampled period results.

Conclusion

For the reasons stated above, we uphold in full the disallowance of $5,511,265 in FFP for FYs 1983 and 1984.

Cecilia Sparks Ford

Norval D. (John) Settle

Donald F. Garrett
Presiding Board Member