DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: North Carolina Department of Social Services
Docket No. 88-39
Audit Control No. NC-87-OA2
Decision No. 986

DATE: September 14, 1988

DECISION

The North Carolina Department of Social Services (North Carolina) appealed a determination by the Office of Child Support Enforcement (OCSE) disallowing $1,383,983 in claims for federal financial participation (FFP) under Title IV-D (Child Support and Establishment of Paternity) of the Social Security Act (Act). OCSE's determination was based on an audit report which found that North Carolina did not credit these programs with interest earned on collected child support payments held by North Carolina during the period from October 1, 1981 through March 30, 1986.

We uphold the disallowance because we conclude that North Carolina is required by federal law, as a condition of the Title IV-D grant program, to credit the federal government with interest actually earned on the federal share of child support collections pending their distribution. As the Board has held in a series of cases, crediting of interest earned is required under section 455(a) of the Act, the regulations at 45 C.F.R Part 74, and guidance documents issued by OCSE and the Office of Management and Budget (OMB). See, e.g., Utah Dept. of Social Services, DGAB No. 750 (1986); New York Dept. of Social Services, DGAB No. 794 (1986); South Carolina Dept. of Social Services, DGAB No. 926 (1987). We incorporate here the reasoning of these decisions, which we summarize below as we discuss new arguments raised by North Carolina.

Background

The Child Support Enforcement Program was established, under Title IV-D of the Act, to enforce child and spousal support obligations. Basic program functions include locating absent parents, determining paternity, establishing the amount of the child support obligation, and collecting support payments. See generally section 451 of the Act.

Title IV-D authorizes grant funding for the costs of operating the State's program. In order to obtain FFP, the State must operate the program in accordance with a federally approved state plan and all applicable federal regulations. Some of the funds collected under Title IV-D are collected on behalf of families which received assistance under the Title IV-A program, Aid to Families with Dependent Children (AFDC). Under section 457 of the Act, child support collections on behalf of these families are not distributed in full to the recipient families; funds are withheld to reimburse the governmental entities which contributed to the AFDC payments. The child support payments are distributed from Title IV-D program accounts according to a formula which requires that the federal share of the funds withheld be credited to the federal government by the Title IV-A agency. See 45 C.F.R. 302.51.

Discussion

The auditors found that North Carolina earned interest on child support collections obtained by the North Carolina Department of Social Services in the operation of a program under Title IV-D of the Act, while it held those collections pending distribution according to the requirements of that program. The auditors relied primarily on section 455(a) of the Act, as amended by the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, section 2333(c). Section 455(a) of the Act contains a formula for determining the amount of FFP in a state's Title IV-D program under an approved state plan. The section states that, in applying the formula, "there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan."

North Carolina did not dispute the audit findings, conceding that the interest was actually earned on child support collections and was not subsequently used to offset program expenditures or to otherwise credit the federal government with a share of the interest. Appendix (App.) A to Appellant's Brief, p. 3. Nor did North Carolina contest the amount which the auditors found was earned. As we discuss below, North Carolina contested only the legal basis for the disallowance of interest earned on child support collections held, pending distribution, by the State Treasury.

In several recent cases, the Board upheld similar OCSE determinations that interest on child support collections is "other income" for purposes of section 455(a) of the

Act. See, e.g., Utah Dept. of Social Services, DGAB No. 750 (1986), pp. 1-7; New York Dept. of Social Services, DGAB No. 794 (1986), pp. 5-8; South Carolina Dept. of Social Services, DGAB No. 926 (1987). In summary, the Board reasoned that the phrase "other income" in the statute is broad enough to include income from interest earned on deposited funds. The Board also found that the interest income results directly from services under the Title IV-D program even though the program does not require investment of dormant funds, because the accumulation of principal balances is a direct result of Title IV-D collection services. Id.

North Carolina did not persuade us that the Board's reasoning in these prior cases was wrong. In general, North Carolina argued that the legislative and administrative background of section 455(a) does not specifically refer to interest and indicates that Congress intended only that states account for fees (paid by recipients of child support collected by the program who do not receive benefits under Title IV-A of the Act). We reject this general argument because we find that, if Congress had intended to limit the section to fees only, no reference to "other income" would have been necessary.

Alternatively, North Carolina argued that the statutory language was intended only to give OCSE discretion to interpret the exclusion more broadly under the authority at section 1101 of the Act to promulgate regulations to interpret the Act, and that no such regulations were issued until September 1984 (when OCSE issued 45 C.F.R. 304.50). North Carolina asserted that OCSE admitted, in action transmittal OCSE AT-82-8 issued September 1982, that "[a]t present, there are no regulations governing the treatment of income earned as a result of providing IV-D services." In that action transmittal, OCSE summarized the requirements of the revised section 455(a) of the Act, which included, in OCSE's view, a requirement to account for interest earned on child support collections. North Carolina argued additionally that the later issuance of the regulation requiring states to exclude from quarterly expenditure claims interest earned on child support collections was evidence that OCSE did not itself consider that the requirement was imposed by the statute alone. Thus, North Carolina argued that disallowance of interest prior to September 1984 was an impermissible retroactive application of 45 C.F.R. 304.50 which explicitly required that states credit the federal government with a share of interest earned on program funds.

We disagree. We find, as the Board has found before, that the plain language of the statute encompasses interest earned from program activities, and thus we conclude that no regulatory action was necessary to implement the requirement that states account for interest earned. Although interest is not specifically mentioned in section 455(a), the requirement to account for interest is consistent with the basic underlying policy that federal funding needs should be offset by the federal share of funds produced through program activities. New York Dept. of Social Services, DGAB No. 794 (1986), p. 6. The fact that OCSE eventually issued a regulation which restated the existing statutory requirement is not material; statutory requirements are often restated in regulations.

Indeed, prior to the adoption of a regulation specifically oriented towards Title IV-D, there was a separate basis to require states to account for the federal share of interest earned on program-related funds. The Board has found before that Department-wide rules applicable to all grantees, contained in 45 C.F.R. Part 74 and Office of Management and Budget (OMB) Circular A-87 (made applicable to grants to states by 45 C.F.R. 74.171) require that grantees reduce program expenditures, for which they claim FFP, by program income or applicable credits. See, e.g., 45 C.F.R. 74.40 et seq.; OMB Circular A-87, Attachment A, C.1.g, C.3. Interest earned on program funds or as a result of program activities is included within the ambit of program income or applicable credits. South Carolina Dept. of Social Services, DGAB No. 926 (1987); see North Carolina Dept. of Human Resources, DGAB No. 361 (1982), aff'd, 584 F. Supp. 179 (E.D.N.C. 1984) (interest on Medicaid collections and recoveries). The Board has found that even in the absence of section 455(a) of the Act or OCSE AT-82-8, states would be required to account for interest in substantially the same manner. Utah Dept. of Social Services, DGAB No. 750 (1986). In issuing OCSE AT-82-8, OCSE was not applying retroactively any new requirement, nor was it changing a previously held policy. This distinguishes this case from United States v. Shelton Coal Corp., 647 F. Supp. 264 (W.D. Va 1986), aff'd, 829 F.2d 1336 (1987), relied on by North Carolina.

In sum, we find that the disallowance is supported by the statutory language itself, the regulatory requirements in 45 C.F.R. Part 74 on accounting for program income, and the requirements in OMB Circular A-87 regarding applicable credits. North Carolina had notice of these requirements and we find that there is no basis to consider this disallowance a retroactive application of 45 C.F.R. 304.50.

North Carolina also argued that the disallowance was unfair because a prior OCSE audit covering part of the disallowance period failed to identify errors in treatment of interest income. In Pennsylvania Dept. of Public Welfare, DGAB No. 451 (1983), the Board concluded that the failure to question costs in one audit did not preclude later review of those costs when, in the prior audit, the auditors had made no affirmative judgment that the questioned costs were allowable and there was no final agency determination regarding allowable costs. The Board reasoned that audit findings are simply recommendations to the agency, not final agency determinations. Thus, a state would not be justified in placing undue reliance on those findings, and those findings would not rise to the level of affirmative misconduct which could possibly preclude the agency from further review. North Carolina provided no basis to reconsider this reasoning here.

Even if North Carolina in good faith misunderstood the requirements of section 455(a) and OMB Circular A-87, and relied on the alleged assurances given in the earlier audit, there is no evidence of detriment to the grantee State from that reliance. The misunderstanding resulted in the State Treasury having the use of the federal share of interest earnings for several years before OCSE instituted this action to recover its share of those earnings. The State benefitted from the misunderstanding by reaping a temporary windfall and is merely being asked now to return the federal share.

While North Carolina conceded that the State Treasury benefitted from the interest earned, it argued that it was unfair to disallow Title IV-D funds since the Title IV-D program under the Department of Human Resources did not share in the benefit, because all interest earned was retained by the State Treasury under State law. */ The fact that the State here has chosen to internally distribute the benefits and the responsibilities in such a

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*/ Although North Carolina indicated that State law prohibited the State Treasurer from crediting the Title IV-D program with interest on program funds, we note that the State laws provided in Exhibit D permit the State Treasurer to pay interest on funds held to the credit of special funds "created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act." N.C. Gen. Stat. 147-69.2. On its face, this does not appear to prohibit the State Treasurer from crediting interest earned to the Title IV-D program.

way that its Department of Human Resources may bear the burden for the State Treasury's investment activities does not affect the State's overall responsibility to account for interest earned on program funds, nor the federal government's right to recover its share of interest earned from the designated agency administering the Title IV-D program. Title IV-D of the Act provides for grants to states and contains requirements, such as accounting for interest income resulting from program services, which can not be circumvented by internal State policies such as assignment of interest income to a State agency other than the one administering the Title IV-D program.

Conclusion

For the reasons discussed above, we uphold the disallowance of $1,383,983 claimed under Title IV-D based on North Carolina's failure to properly account for the federal share of interest earned on undistributed child support collections.

Cecilia Sparks Ford

Alexander G. Teitz

Norval D. (John) Settle
Presiding Board Member