

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Pinellas Opportunity Council, Inc.
Docket No. 79-58
Decision No. 80

DATE: FEB. 6, 1980

DECISION

I. Procedural Background.

Pinellas Opportunity Council, Inc. (Grantee), appealed by letter dated March 21, 1979, from the February 14, 1978, determination of the Chief, Technical Assistance Branch, Office of Financial Management, OHDS, Region IV, disallowing \$28,635 expended in excess of the authorized budget for its program year H Head Start grant (for the year ended December 31, 1976). Grantee stated that an appeal was not filed within 30 days of the February 14, 1978, adverse determination (as required by 45 CFR 16.6(a)(1)) because the original of that document was never received. Grantee further stated that an appeal was not filed within 30 days of OHDS's February 9, 1979, letter confirming the disallowance because that letter was not received until February 26, 1979. The Board Chairman determined that good cause had been shown for granting an extension of time to file the application for review, and accepted the appeal. (Letter from Board's Executive Secretary to Grantee dated May 16, 1979.) On October 9, 1979, an Order setting forth the facts and issues as they appeared from the record and directing Grantee to show cause why the appeal should not be denied on certain grounds (set forth below) was issued by the Board Chairman. The Order was based on the application for review and attachments, documentation furnished by Grantee in response to a letter from the Board's Executive Secretary dated May 16, 1979, and a copy of the relevant audit report, which was obtained by Board staff. The Agency, which was invited but not required to submit briefing in response to the Order, chose not to do so. No response was received from Grantee, and upon inquiry by Board staff, Grantee stated that it did not intend to file a response. We therefore adopt the tentative conclusions stated in the Order and rule against Grantee.

II. Statement of the Case.

The audit report on which the disallowance is based (Audit Control No. 04-76224) shows that Grantee expended \$29,873 in excess of the amount budgeted for its program year H Full-Year/Full-Day Head Start program. The Agency permitted Grantee to set off against that amount \$1,238 in unexpended funds in the account for its program year H Full-Year/Part-Day Handicapped Cluster Training program, resulting in the \$28,635 disallowed.

Grantee concedes that it expended in excess of the amount budgeted for program year H. It asserts, however, that this occurred only because there were unanticipated increases in the costs of goods and services due to inflation, forcing it to spend more than it had previously spent in order to maintain the quality of its program for the same number of children. As discussed below, Grantee cannot properly claim Federal funds in excess of the amount awarded even if the overexpenditures were due to circumstances beyond its control. Moreover, documentation submitted by Grantee with its application for review indicates that some of the overexpenditures were due to expanded activities rather than merely increased prices. Grantee accounted for the overexpenditures as follows: additional supplies required for new in-house projects (\$3,680); extra repairs made to maintain licenses for its Head Start Centers (\$1,560); medical and dental care for children no longer eligible for Medicaid (\$3,156); increased insurance costs (\$3,282); unanticipated repairs on older vehicles (\$11,004); and increased utility costs (\$1,163).

There is some indication in the record that Grantee in fact recognized that it could not properly charge the overexpenditures to the program year H grant as originally awarded. Apparently at the suggestion of OHDS officials, Grantee in July 1978 requested a supplemental award to cover the overexpenditures, but its request was subsequently denied on the ground that "[a]dditional funds are not available...." Grantee also stated that it restricted its spending in program year J, accumulating a carryover balance of approximately \$40,000 to \$50,000, in the hope that it might be permitted to apply these funds to cover the overexpenditure in program year H. (There was also a similar overexpenditure in program year I to which Grantee hoped to apply these funds. Grantee only alluded to such an overexpenditure, however, and did not provide a copy of any adverse determination relating to program year I or state that it was appealing any such determination.) By letter to the Agency dated January 31, 1979, Grantee requested that it be permitted to use unexpended funds from program year J to cover the program year H overexpenditures. The Agency's letter confirming the disallowance stated in response to this request that "our regulations preclude the transfer of prior period costs to the current or the transfer of present period funds to cover prior period costs."

III. Discussion.

Neither the Agency's original disallowance determination nor the letter affirming it cited specifically the regulations or other provisions relied on. The terms and conditions for Grantee's program year H grant provide, however, that "[e]xpenses charged against program funds... may not exceed the maximum limits set in the approved budget shown on the OHD Statement of Grant Award or those in a budget subsequently amended for that approved program..." (Section 3.) This provision prohibits Grantee from charging the costs in question to the program year H grant regardless of the mitigating circumstances which it pleads. It also bars the use of program

year J funds to cover the costs in question, since the effect would be to increase the amount available for the program year H grant. There is a serious question, however, as to whether the grant terms and conditions are legally enforceable, since they were not published in the Federal Register in accordance with 42 U.S.C. 2928f(d), which requires the publication of all rules, regulations, guidelines, and instructions for the Head Start program (among other programs) at least 30 days prior to their effective date. (Cf. Ohio University, DGAB Docket No. 75-10, Interlocutory Decision, August 16, 1977, at pp. 4-6; Head Start of New Hanover County, DGAB Docket No 78-94, Decision No. 65, September 26, 1979, at p. 3; Knox County Economic Opportunity Council, Inc., DGAB Docket No. 78-14, Decision No. 68, October 29, 1979, at p. 2.) Despite this question, two considerations appear decisive against the grantee.

To the extent that the appeal rests on the contention that the program year H grant should be increased to cover those costs in excess of the amount budgeted, with or without a formal supplemental award, we conclude that the appeal should be denied. This Board is not vested with the authority to make an award of grant funds. With respect to Grantee's contention that the excess costs are properly charged as a cost of the program year J grant, it should be noted that the cost principles applicable to the grant provided that a cost in order to be allowable must be allocable to a grant, that is, "incurred specifically for the grant." 45 CFR Part 74, App. F, Para. B (38 FR 26274, 26310 (September 19, 1973).) In its decision in Southern Methodist University, DGAB Docket No. 76-8, Decision No. 41, October 19, 1977, considering an identical provision applicable to an Upward Bound grant, the Board found that the grantee had improperly charged room and board costs incurred under one year's grant to the succeeding year's grant, since "[no] benefit from incurrence of such cost could inure to [the succeeding year's grant]." No contention was made by Grantee here that the costs in question were of benefit to the program year J grant, which was awarded two years after the grant under which they were actually incurred. This case is distinguishable from that presented in Knox County Economic Opportunity Council, Inc., DGAB Docket No. 78-14, Decision No. 68, October 29, 1979, in which the Board, granting the appeal, found that costs disallowed as in excess of Grantee's program year I grant were allocable to its program year J grant as well, and that approval by the Agency of the use of any available funds for the costs in question appeared to have been accorded.

IV. Conclusion.

The Order directed Grantee to show cause why the appeal should not be denied on the grounds that this Board has no authority to increase the amount of the program year H grant and that the excess costs are not

allocable to the program year J grant and therefore may not be properly charged to that grant. In the absence of any such showing, we deny the appeal on those grounds.

/s/ Bernard E. Kelly

/s/ Thomas Malone

/s/ Malcolm S. Mason, Panel Chairman