

DEPARTMENTAL GRANT APPEALS BOARD
DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Subject: Soul City Foundation, Inc.
Docket No. 76-18
Decision No. 43

Date: April 4 1978

DECISION

This is an appeal from a decision dated August 24, 1976, by the PHS Grant Appeals Review Committee sustaining a decision dated March 16, 1976, of William B. Lyons, Assistant Regional Health Administrator, Region IV, DHEW, disallowing certain overexpenditures made by Soul City Foundation, Inc. under Comprehensive Health Services Planning Grant (OEO) No. 4815.

Facts

The grant was made by OEO to Soul City Foundation Inc., a tax-exempt public foundation, under the authority of the Economic Opportunity Act, Section 222(a)(4), for the period June 1, 1971 through June 30, 1972, and subsequently extended until October 31, 1972, without additional funds. During the summer of 1973, responsibility for administration of the grant was transferred to the Public Health Service (PHS), DHEW. The grant was subject to the applicable General Conditions governing grants under Titles II and III-B of the Economic Opportunity Act of 1964, as amended. In addition, the grant was subject to a number of special grant terms and conditions set forth in an attachment to the grant award document, among which was the requirement that certain types of expenditures be made in accordance with published OEO Instructions. The total amount of Federal funds authorized under the grant was \$98,934, although the actual expenditures reported were \$99,460.

Based upon the results of an audit of the grant conducted by W. H. Phillips and Co., Certified Public Accountants, pursuant to an agreement between that firm and Grantee, the Associate Director, Office of Health Affairs, Office of Economic Opportunity informed Grantee, in a letter dated August 6, 1973, that \$3,757 in costs were questioned by the auditors since they represented over-expended budget line items. He further stated that they would be disallowed unless Grantee could provide adequate documentation and justification for the costs. As noted earlier, during the summer of 1973, the grant was transferred to the administration of the Public Health Service, DHEW and all future communication concerning the questioned costs was conducted between Grantee and PHS.

Although Grantee supplied PHS with justification for the questioned costs in a memorandum sent under cover of a 10-1-73 letter, no final determination with respect to the costs was made until March 16, 1976 when the Assistant Regional Health Administrator disallowed \$3,757 on the basis that Grant Special Conditions stipulated that written approval must be obtained from the Office of Health Affairs before exceeding budgeted amounts.

Grantee was informed that it had the right to appeal the decision to the Regional Health Administrator in accordance with 42 CFR 50 Subpart D by requesting a review in writing. Grantee did so appeal the decision on April 15, 1976, but on April 22, 1976, the appeal was denied. It should be noted that 42 CFR 50 Subpart D provides for grantees to appeal to a review committee appointed by the Assistant Secretary for Health or his designee, not to the Regional Health Administrator. Grantee was informed that it had the right to appeal the Regional Health Administrator's decision to the Director, Division of Grants and Contracts, in accordance with 42 CFR 50 Subpart D, and did so in a letter dated May 20, 1976. In its decision, transmitted to Grantee on September 3, 1976, the PHS Regional Grant Appeals Review Committee upheld the disallowance on the basis that Grantee failed to comply with Grant Special Condition #8, OEO Instruction 6710-1, Change 3, effective 7-1-71, and OEO Instruction 6803-1 concerning reimbursement for meal costs to Community Action Council (CAC) members. These will be further explained below. Grantee was informed that it could appeal the Committee's decision to the Departmental Grant Appeals Board, in accordance with 45 CFR Part 16. Grantee did appeal to the Board on October 1, 1976 on the basis that the disallowed costs were reasonable and that the failure to comply with certain administrative requirements concerning approval for expenditures was an oversight.

In its 12-8-76 response to a 12-2-76 memorandum from the Executive Secretary of this Board, the Director, Division of Grants and Contracts, PHS, transmitted a November 19, 1976 response to Grantee's appeal prepared by the Chairman of the Regional Review Committee. This memorandum reiterated the reasons for disallowance contained in the Committee's initial decision.

The expenditures disallowed fall into three categories: (1) Travel costs; (2) Food Expenses; and (3) Exceeding Budgeted Costs. These will be considered separately since their allowability depends on different policy statements and applicable instructions.

Travel

The Soul City budget contained a line item for travel in the amount of \$9500. The audit identified an overexpenditure for travel in the amount of \$702. PHS disallowed that excess travel expenditure on the ground that prior approval had not been requested or received for such additional travel expense. It was the PHS contention that reimbursement was impermissible for lack of such prior approval. Soul City justified (memorandum accompanying letter dated October 1, 1973. p.3) incurrence of this travel expense as proper reimbursement for mileage -at the rate of ten cents per mile- for Citizens Advisory Council members attending Council meetings, for some of whom a round trip of 40 to 50 miles was involved. Outreach staff follow-up activities also accounted for a number of the trips involved. Soul City contends the travel was performed in accordance with OEO Instructions 8301 and the special conditions of the grant.

In response to this Board's Order to Clarify the Record, Soul City submitted a table identifying the amounts of travel expense incurred during the four-month extension of the grant. It appears therefrom that it was during this period that the excess travel expenditures occurred. PHS has not, at any time during the several levels of appeal, challenged the merits of the travel as not incurred for a proper grant purpose. Its sole expressed objection is based on the failure to obtain prior written approval of the Office of Health Affairs, OEO. Special Grant Conditions No 8 provides:

"Total funds expended for travel may not exceed \$9500 without written approval of the Office of Health Affairs."

PHS has interpreted this Condition as requiring prior approval (March 16, 1976 letter, paragraph 2). The quoted language does not, in terms, mandate such prior approval. This may be contrasted to Special Grant Condition #5 which provided that "explicit written approval from OEO must be obtained before such [research] activities are commenced (emphasis supplied). It thus appears that where a prior approval was intended, OEO explicitly so prescribed it. This Board is not convinced that authorization to exceed the amount budgeted for travel was required in advance. But we need not, in fact, affirmatively so decide for in its response of December 13, 1977, to the Board's Order to Clarify the Record, PHS receded from its former stance. It there stated (Issue No. 1) that "If approval is sought after-the-fact, but in a timely manner, and adequate justification for the expenditure is provided, we believe that the special condition need not be considered violated."

We agree. In our view, Soul City has advanced adequate justification. Considering the nature of the organization and the circumstance that the excess travel expenditures occurred during a four-month extension of the grant, we find it would be unreasonable and inequitable, to disallow these costs on the ground that after-the-fact request for approval was not timely made, particularly since the propriety of the purposes for which the expenditures was made has not been challenged. Accordingly, the disallowance of excess travel costs is reversed.

Food Expenses

Special Grant Condition #6 states:

"Reimbursement to the members of the community advisory group for expenses incurred in attending meetings may be made only in accordance with OEO Instruction 6803-1."

Instruction 6803-1, dated August 11, 1969, regarding allowances and reimbursements for members of policy making bodies states, in part:

"...Where per diem is not in effect, reimbursement for the actual costs of meals may be paid to the poor, only,

when the time of an official meeting or other official appointment is such as to require attendance during a meal hour and when the meal is not otherwise provided. Such reimbursement shall be for the actual cost of the meal, but may not exceed \$1.50 per person for lunch and \$3.50 per person for dinner." (Section (3)(c))

The Instruction also provides that:

"No person shall be reimbursed for more than two meetings per month regardless of whether the meetings are for the same or different policy making bodies" (Section (2))

Grantee charged \$678 for food costs to the grant. \$504 consisted of the costs of lunches provided to CAC members during planning meetings.

PHS contends that since Grantee provided the meals to the CAC members and charged the costs to the grant rather than reimbursing the individual CAC members for actual costs incurred, the Instruction, strictly read, was not followed.

In its response to the Grantee's appeal letter to this Board, the Regional PHS Grant Appeals Review Committee stated that it had confirmed that its interpretation of the above cited OEO Instruction was consistently applied to all OEO grantees, although it did not state by whom the interpretation was applied. No further clarification of this point was provided nor did PHS state whether or not exceptions are ever made to the rule and if so, in what situations.

Soul City's letter of November 22, 1977, replying to the issue of Meal Costs set forth in the Board's Order to Clarify the Record furnished justification for providing meals in kind rather than reimbursement of expenditures made by those attending meetings and eligible for such reimbursement. Grantee stated:

"The closest luncheon facilities for a group of thirteen would have been either in Henderson, 10 miles South, or Warrenton, 8 miles East. However, facilities to meet while eating were non-existent except for private room charges.

It was deemed that the most efficient manner to conduct luncheon meetings/work sessions was to pick up Colonel Sanders Kentucky Fried Chicken and set up the luncheons in health planning office conference room."

Unless otherwise prohibited, it appears to this Board that provision of meals in kind under the circumstances above described was a reasonable and prudent judgment. Although the Instruction refers to reimbursement

for the actual costs of meals, we would not be so slavish as to adhere to the literal reading of the language in support of which the PHS argues.

We might add that we find no relevance of the PHS argument in its December 13, 1977 submission concerning the furnishing of meals in kind as a non-Federal share contribution.

Acceptability of the furnishing of meals in kind is not, however, entirely dispositive of this issue. It is noted that the explicit limitations set forth in the Instruction have, in several instances, been exceeded. In its letter of November 22, 1977, responding to the Order to Clarify the Record, Soul City submitted a table of meal expenditures. In three of the months, January, February and March, 1972, more than the two meals per month were served to each of the 13 members who attended. While we understand the Foundation's concern for meeting its proposal submission deadline, the Instruction is so clear and unambiguous as to leave no latitude for discretion or contrary interpretation. Also, the table of expenditures indicates that the \$1.50 per person cost for luncheons was exceeded. Consequently, we are constrained to disallow such portions of the meal costs as exceeded the two meals per person per month and the \$1.50 per person cost, amounting to \$144.69 according to our computations. We also noted that during the months of June and August the total luncheon expenditures reported divided by the number of meals served results in a per person cost that is considerably higher than the reported cost and that it exceeds \$1.50 per meal. We assume that this represents an unintentional error in division and that the total amount spent and the number of meals served are correct. Therefore, we sustain disallowance of the amount spent in excess of \$1.50 per meal during those months, amounting to \$20.02 according to our computations.

An additional item of Food Expenses disallowed was the sum of \$174.00, representing costs incurred for serving coffee and cookies. The PHS considered these to be entertainment costs and therefore unallowable. Soul City justified furnishing them as a matter of courtesy and reasonableness since the meetings, including Board members' travel time to and from the meetings took over 3 1/2 hours.

We find nothing in either the Special Grant Conditions or the Instructions which allow or even contemplate the provision of refreshments to Board members or others who attend meetings. Furnishing such refreshments may have been a reasonable and courteous act of compassion, but we find no basis under the grant terms and conditions for properly charging their cost to the grant. We, therefore, sustain the disallowance of those expenditures.

Exceeding Budgeted Costs

The remaining \$2,377 was disallowed on the basis that it represented in excess of 10% over the budgeted amount for the consumable supplies category. The cited authority for the action was OEO Instruction 6710-1, Change 3 effective July 1, 1971. The stated purpose of the Instruction was to provide increased flexibility between Section 221 program accounts of up to 10% and to revise the process whereby an OEO grantee requests amendments to his grant. A portion of the Instruction states:

"...OEO grantees may also shift funds between Section 221 program accounts or from a Section 221 program account to another Title II program account or a Title I program funded by OEO... Shifting of funds between designated accounts shall be subject to the following provisions.

(1) No program account may be increased or decreased by more than 10% or \$100,000, whichever is smaller, in a single program year, without prior OEO approval..."

PHS apparently interpreted the term "program account" to mean budget line item. Grantee did not dispute that interpretation. For this particular grant, only one program account was used, Comprehensive Health Services, defined in OEO Instruction 6100-1, dated 6-21-68.

Another policy is described in the above-cited Instruction as follows:

"A new policy is hereby instituted whereby OEO grantees may shift funds between Personnel and Non-Personnel costs in a Program Account without prior OEO approval, provided no basic changes are made in a program account work program and provided that the changes will not increase current or future full year costs."

According to the approved budget of the grant, \$74,984 was budgeted for Personnel costs and \$23,950 for Non-Personnel costs for a total budget of \$98,934. The actual expenses incurred were \$68,758 for Personnel costs and \$30,701 for Non-Personnel costs, totalling \$99,459. Although the actual costs incurred exceeded the total amount budgeted by \$525, the difference represents an excess of expenditures over revenues and no additional funds were requested or received by Grantee. This, in effect, represents a shifting of funds between Personnel and Non-Personnel costs as described in the Instruction.

PHS responded to the issue of limitation on shifts of funds between program accounts by stating:

"It appears that in previous correspondence on this subject, including the PHS appeals committee decision and previous submissions to the Departmental Grant Appeals Board, an incorrect interpretation of OEO Instruction 6710-1, Change 3

was relied on as the basis for disallowing \$2,377 in non-food consumable supplies. We interpret this instruction as requiring prior approval for transfers in excess of 10 percent or \$100,000, whichever is smaller, between program accounts, and such changes which are of a lesser magnitude requiring after-the-fact information to OEO. For transfers of funds between and within personnel and non-personnel costs within a single program account, in this case Comprehensive Health Services, the grantee had the flexibility to rebudget to any extent without grantor prior approval provided (1) the scope of work was not modified, (2) the total approved budget level for that program year was not exceeded, and (3) future year funding requirements were not altered by the rebudgeting actions.

We take this statement to be a concession of the incorrectness of the agency's interpretation of Instruction 6710-1, Change 3, as requiring prior approval to budget line items shifts within the maximum limitations stated in the Instruction. With respect to the merits of the expenditures as constituting reasonably necessary and related to the project purposes, PHS states it "would not now either disallow the entire amount on the grounds of a policy violation ... nor allow the entire amount as constituting permissible rebudgeting." This posture of ambivalence does not support disallowance of the fund shift clearly contemplated and authorized by the Instruction.

Decision

It is the decision of this Board that the disallowance decision of the Regional Health Administrator and the PHS Grant Appeals Review Committee be and is hereby reversed, and the appeal sustained, to the extent indicated above, and that Grantee be required to refund the \$338.71, that being the amount of expenditures properly disallowed.

/s/ Manuel B. Hiller, Panel Chairman

/s/ Francis D. DeGeorge

/s/ David Dukes