

DEPARTMENTAL GRANT APPEALS BOARD

Department Of Health and Human Services

SUBJECT: Economic Opportunity Agency of Pulaski      DATE: December 31, 1981  
          County, Inc.  
          Docket No. 80-155  
          Decision No. 242

DECISION

Introduction

The Economic Opportunity Agency of Pulaski County, Inc. (Grantee) appealed a determination of the Office of Human Development Services (Agency) to disallow funds from the Grantee's Head Start grant. The Agency disallowed a total of \$30,119 but later withdrew the disallowance as to one issue involving \$5,065. The only issue now before the Board concerns the use of \$25,054 from an unemployment escrow fund to pay program expenses which exceeded the amount of federal funds awarded to the Grantee during the thirteen month period which ended August 31, 1979.

This decision is based on the Grantee's initial letter and supplementary briefing with documentation; the Agency's response to the appeal; a telephone conference on July 13, 1981 among the parties and a Board staff attorney; a submission by the Grantee pertaining to the telephone conference; a second telephone conference among the parties, a Board staff attorney, and the Presiding Board Member; and supplemental briefing by both parties.

Initially, the Grantee requested a hearing; it later modified its request to one for a conference. The Grantee subsequently agreed to participate in a telephone conference which was preceded by a Notice from the Board setting out its analysis of the case. The Grantee did not request a further conference. We determined that a hearing was not necessary because there had been no demonstration of material facts in dispute the resolution of which would be significantly aided by a hearing. We also determined that both sides had ample opportunity to present their arguments both in written submissions and orally. We have, therefore, proceeded to decision, and we uphold the disallowance for the reasons stated below.

Statement of the Case

According to the audit report (ACN 06-06125) for the Grantee's full-year Head Start program, the approved HHS share of expenditures for the thirteen months in question was \$1,005,546. The audit report shows that actual expenditures in the same amount were charged to HHS. The auditors explained the calculation of actual expenditures in a letter that was a result of the first telephone conference. The approved budget expenditures for fringe benefits totalled \$96,690. The \$25,054 in question was credited to the "actual expenditures" for fringe benefits. As a result, the "actual expenditures" column shows a total expenditure of \$70,066. Had this credit not been made, fringe benefit expenditures would have been \$95,120, which still would have been within the line item budget. Total expenditures would not have been within the approved budget limits however, because there were line item overexpenditures in several other categories that totalled \$25,054 more than the line item underexpenditures. If the \$25,054 credit had not been made, total expenditures would have been \$1,030,602 rather than \$1,005,546.

The issue in this appeal is the propriety of the \$25,054 credit of Head Start funds to cover the \$25,054 overexpenditure.

The Grantee justified the \$25,054 credit in the following manner. The Grantee had set up its own private trust fund to pay unemployment benefits. Each program run by the Grantee had its separate income and expense accounts in the fund. (Application for Review, p. 2.) According to the Grantee, because of a problem in its accounting department, it did not notice that funds in the Head Start escrow account had accumulated to an excessive level over several years. Once the excess was noticed, the Grantee "put back [the funds] into our program as a credit to costs as allowable under Title 45, Part 74, Appendix F, B.5...." (Ibid.)

Discussion

Although it appeared that the Grantee was arguing that the \$25,054 was derived from federal Head Start funds, the Board queried whether a portion of the funds might have represented the Grantee's own contribution to the Head Start program through its "non-Federal share." In its response of November 10, 1981 the Grantee indicated that the Head Start account had either been exhausted or very nearly exhausted and that the excess funds in its escrow account must have come from one or more of 23 other projects the Grantee administered. The Grantee stated:

From March, 1973, through August, 1979, EOA through its Headstart project deposited into the unemployment escrow account \$35,130.74. The grantee's claim records for 1978 show that the total claims

paid from the unemployment escrow account for the benefit of the grantee's former Headstart employees were \$5,179.01. Using that figure for each year from 1973-1978, the total amount paid in unemployment claims from the unemployment escrow account for the benefit of the grantee's former employees would be \$31,074.00. Further, the actual claims paid in 1979 were \$3,333.00, for a combined total for the period 1973-1979 of \$34,407.00.

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The grantee's records reflect the amount of money each project contributed to the escrow account for its employees, but did not break down the amount of claims paid out for each project. This is because the grantee's employees occasionally transfer from project to project within the grantee's components, which would make it difficult to determine exactly how much each project should be charged for each actual unemployment compensation paid by the trust.

The Agency in its response to the Grantee's November 10th statement strenuously objected to "the Grantee's guesswork in concluding that an average of \$5,179.01 was paid for Head Start employees each year from 1973 through 1977." The Agency also noted the Grantee's failure to document even the amount paid for the benefit of Head Start employees in 1978 and 1979. Based on the Grantee's earlier statements in this appeal concerning separate income and expense accounts, the Agency felt that the Head Start funds should be easily traceable and should clearly reflect income and expenses. The Agency also wondered why specific figures allegedly were available for 1978 and 1979 but not for earlier years. The Agency concluded that since no records of claims against the account were submitted, it was not possible to find that any claims had been paid out of Head Start accounts for the years in question.

We agree with the Agency. The Grantee initially raised the issue of excess Head Start funds in its escrow account by arguing that they could be viewed as a credit under 45 CFR Part 74, Appendix F, B.5. By definition this provision applies to the return of funds that had originally been provided to a grantee from the granting agency. Moreover, the Grantee stated unequivocally that \$35,130.74 of Head Start funds had been paid into the escrow account from 1973 through 1979, but failed to document the amounts leaving the account for unemployment claims for any of the years. There is no basis, legal or other, to conclude that since a particular amount might have been paid out in 1978, the same amount was also paid out in the five preceding years. We are also troubled by the contradictions in the Grantee's position as it evolved -- for example, concerning the existence of separate escrow accounts for each

of its projects. Finally, we note that while the Grantee argued that only a small amount of the excess was Head Start funds, it did not identify affirmatively which of the other projects was the source of the funds and exactly how much of an excess existed in the account as a whole.<sup>1/</sup> Accordingly, in the absence of any documentation that funds left the Head Start escrow account, we conclude that the excess funds in the account were Head Start funds.

Having reached this conclusion, we now consider the effect of the applicable credit regulation which the Grantee argued permitted it to use the excess escrow account funds to cover a 1979 overexpenditure of \$25,054.

45 CFR Part 74, Appendix F, B.5 states:

Applicable Credits. The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to grants or contracts as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges. The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the grantee/contractor shall be credited to the Government either as a cost reduction or by cash refund, as appropriate. (emphasis added)

Under this provision, the Grantee could have an applicable credit for unused escrow amounts but the credit could only be applied against actual unemployment expenditures for a given budget period and in no instance could the credit be higher than the actual expenditures for that period. Using that analysis, it appears that the Grantee may have had unobligated balances for some or all of the budget years in question resulting from "credits" even though the Grantee did not present documentation which would enable the Agency to determine the extent of the credits for particular years.

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<sup>1/</sup> Indeed, even if the Grantee could demonstrate that the funds were derived from other projects, it still might have to overcome substantial legal hurdles (not necessarily within our jurisdiction) before it could use those funds for Head Start purposes because such use would involve, for example, issues concerning allowability under the source projects.

The OHD Grants Administration Manual Chapter 1-1-3 (published at 42 Fed. Reg. 21046 et seq.) states that a grantee may only use an unobligated balance in a budget period subsequent to that for which the funds were awarded if there has been prior written approval from the authorized official of the granting office. There is no evidence in the file that a request was made by the Grantee to the Agency to carry over the funds. In the absence of a request and approval of a carryover to offset overexpenditures, we must sustain the disallowance.<sup>2/</sup>

In its application for review, the Grantee raised several "equitable" arguments (pp. 2-3) to justify use of the escrow excess for the overexpenditure. The Grantee may be correct that the line item overexpenditures may otherwise have been allowable and that it was running an admirable project, but it has been the Board's position that if the Grantee's action was unauthorized, then the Board will not excuse it. See, e.g., American Foundation for Negro Affairs, Decision No. 73, December 28, 1979.

Conclusion

Based on the reasons stated above, we uphold the disallowance of \$25,054.

/s/ Cecilia Sparks Ford

/s/ Norval D. (John) Settle

/s/ Donald F. Garrett, Presiding Board Member

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<sup>2/</sup> If the Grantee can document to the Agency's satisfaction that some part of the \$35,130.74 contributed into the Head Start account of the escrow fund was done so in the thirteen months which ended August 31, 1979, then the Agency should consider whether a credit can be applied to the 1979 contribution as a reduction of expenditures and thereby reduce the net overexpenditure.