

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Hinds County Human Resources Agency
Jackson, Mississippi
Docket No. 79-11
Decision No. 109

DATE: July 3, 1980

DECISION

Hinds County Human Resources Agency (Grantee) appealed a determination, dated January 11, 1979, by the Acting Director, Grants Administration, Office of Human Development Services (OHDS), Region IV, disallowing \$48,609 in costs charged to Head Start Grant No. 3194K. Grantee originally applied for review by letter dated January 23, 1979, but failed to attach a copy of the notification of disallowance. This defect was corrected by Grantee's letter dated March 1, 1979. By memorandum dated April 12, 1979, OHDS was asked to respond to Grantee's appeal and, after an extension of time for good cause shown, filed a "Memorandum In Support of Motion to Dismiss Appeal for Lack of Jurisdiction Or In the Alternative To Affirm Decision of Office of Human Development Services," dated June 5, 1979. By letter dated May 20, 1980, the parties were provided an opportunity to comment on a tentative draft of the Board's decision. OHDS indicated its concurrence with the conclusions set forth in the draft. The Grantee did not comment.

Based on its review of audit report ACN 04-86244, prepared by the accounting firm of Ernst & Ernst with respect to Grantee's Head Start project for Program Year K ending December 31, 1977, Region IV, OHDS, disallowed \$48,015 in costs identified as "cost in excess of approved budget not allowable" plus \$594 in specific costs questioned by the auditors, for a total of \$48,609.

Excess Costs

As explained by the Grantee in its letter of January 23, 1979 (p.3), the \$48,015 was not reported as costs incurred in excess of the Grantee's approved budget for the program year but as costs in excess of actual revenue. Grantee's budget for Program Year K included an approved Federal budget for Program Account 22 of \$1,501,100. An estimated 1976 carryover balance of \$172,687 was subtracted from the total amount budgeted and new Federal funds of \$1,328,413 were awarded. The actual 1976 carryover balance for Program Account No. 22 was only \$101,865. The audit report supports the following comparison of figures presented by the Grantee:

a. EXPENDITURES COMPARED TO BUDGET

| | |
|---|-------------|
| Funds awarded per Grant Action | \$1,328,413 |
| Carry-over funds authorized per Grant Action-1976 | 172,687 |
| Approved Budget for 1977 | \$1,501,100 |
| Total expenditures for 1977 | 1,496,057 |
| Excess of budget to expenditures | \$ 5,043 |

b. EXPENDITURES COMPARED TO ACTUAL REVENUE

| | |
|-----------------------------------|--------------------|
| Funds awarded per Grant Action | \$1,328,413 |
| Actual carry-over funds 1976 | 101,865 |
| Other Revenue | <u>17,764</u> |
| Actual funds available for 1977 | \$1,448,042 |
| Total Expenditures for 1977 | <u>1,496,057</u> |
| Excess of expenditures to revenue | <u>\$ (48,015)</u> |

Grantee, in response to the Board's request for clarification as to the difference between the estimated and actual carryover funds, stated that it was not certain as to the source of the estimate but speculated that perhaps the Region had determined the amount based on a reprogramming of approximately \$182,000 of reimbursements by the U.S. Department of Agriculture for 1976 food expenditures.

The auditors issued their report for Grantee's Program Year J (ending December 31, 1976) on March 14, 1977. This report clearly identified the fund balance on December 31, 1976, for Program Account No. 22 as \$101,865. Apparently, Grantee neither revised its budget nor requested supplemental funds to account for the difference in estimated and actual carryovers. Grantee explains that it did not become aware of the difference until the end of the program year "because the budget had not been overspent" and "due to the prior method of funding." (Letter of March 1, 1979, p.2.) According to Grantee, "Prior grant awards incorporated the actual carryover balance from prior years audit report and new funds awarded would supplement this amount to equal our approved budget." (Letter of March 1, 1979, p.2.)

Grantee further alleges that its payroll costs were increased for the year by \$52,000 since the "grant action authorized [grantee] to give all employees a raise based on the estimated carry-over." Grantee claims that it is not fully responsible for the overexpenditure "[d]ue to the problems caused by the grant action." (Letter of January 23, 1979, p.3.)

Grantee seeks an additional award to make the Federal funds available for Program Year K equal to that year's approved budget or, in the alternative, that it be "allowed to absorb this deficit through positive fund balances to be created at the end of subsequent funding periods." (Letter of January 23, 1979, p.3.)

Unallowable Costs

OHDS originally disallowed \$594 in specific costs questioned by the auditors. After reviewing the Grantee's appeal, OHDS decided that \$310 in salary cost should not have been disallowed. The remaining \$284 includes \$89 paid by Grantee as an interest penalty for failure to file and pay a use tax for 1976 and \$195 in telephone expenses.

With respect to the \$89 interest penalty, Grantee explains that its predecessor organization, Community Services Association, was responsible for failure to file and pay the use tax initially and that Grantee was not aware of this obligation when it assumed sponsorship of the project. Grantee attempted to contest its liability for the tax but ultimately paid the assessment plus interest.

The disallowance letter did not specify the grounds for questioning payment of the penalty. In its response to the appeal, however, OHDS cited 45 CFR Part 74, Appendix F, Paragraph G.14., which provides in pertinent part:

Fines and penalties. Cost of fines and penalties resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable....

The \$195 was disallowed as the cost of undocumented long distance telephone calls. Grantee did not produce any documentation in support of the allowability of this cost but requested relief on the grounds that the undocumented amount is a small percentage of Grantee's total telephone costs (\$11,165) and that, even though Grantee attempts to maintain its telephone logs in a proper manner, its system is not adequate to prevent all unauthorized calls or to insure that all authorized calls are recorded.

OHDS in its response cites 45 CFR 74.61(g), which provides that "accounting records shall be supported by documentation...." OHDS further states, "The burden is on the Grantee to support its expense as being necessary, reasonable, and related to the purposes of its grants."

Discussion

With respect to the \$48,015 in excess costs, Grantee's arguments provide an insufficient legal basis for a decision in its favor. While it is unfortunate that OHDS did not recognize the discrepancy between the estimated carryover included in the budget and the actual carryover identified in the report of expenditures, responsibility for assuring that costs do not exceed available resources rests in the first instance with the Grantee. The amount of new Federal funds awarded for Program Year K was clearly set forth in the notice of grant award for that year. Even assuming that OHDS was responsible for inclusion in the budget of the inflated estimate of carryover funds, when the auditors later reported that the actual carryover was substantially less, the Grantee should have adjusted its budget accordingly.

There is a further basis for denial of the Grantee's appeal on this issue, however. Even if this Board found in favor of the Grantee, there is no relief that could be granted.

The Board has consistently held that it does not have the authority to award supplemental funds to a grantee. (Pinellas Opportunity Council, Inc., DGAB Docket No. 79-58, Decision No. 80, February 6, 1980; Anderson-Oconee Headstart Project, Inc., Docket No. 79-80, Decision No. 90, April 28, 1980.) Further, there is no guarantee that Grantee will have "positive fund balances to be created at the end of subsequent funding periods," and, even if such fund balances were created, it is not clear that the application of such funds would be permissible. Costs, to be charged to Federal funds awarded for a particular program year, must be allocable to that year.

With respect to the \$89 for the interest penalty, we conclude that this cost is unallowable based on 45 CFR Part 74, Appendix F, Paragraph G.14., made applicable to the grant in question by 45 CFR 74.174(a), 38 FR 26275, September 19, 1973.

The version of Section 74.61(g) of Part 74 cited by OHDS as a basis for disallowance of the telephone costs is not applicable since it was not published until 1978. Furthermore, OHDS has not cited any duly published policy statement which would make the 1973 version of that section applicable, although OHDS was requested to state how any cited basis for the disallowance was binding on the Grantee. On the other hand, OHDS is correct that the burden is on the Grantee to document any claimed costs. The Board has held that the requirement for documentation of costs is so basic that OHDS need not rely on any specific provision in the applicable guidelines. (Head Start of New Hanover County, Inc., DGAB Docket No. 78-94, Decision No. 65, September 26, 1979, p.3; cf. University of Minnesota, DGAB Docket No. 77-4, Decision No. 44, August 14, 1978, p.3.)

While OHDS was correct in identifying this \$284 (\$89 + \$195) as representing unallowable costs, the total disallowance should have been only \$48,015, the amount of Grantee's excess costs. The question of whether specific costs were allowable under the applicable cost principles is relevant only insofar as Grantee charges those costs to Federal program funds. Grantee had available program funds amounting to \$1,448,042 and had allowable costs in that amount which could be charged to those funds. Since Grantee must cover the \$48,015 excess costs with its own funds, fairness dictates that Grantee be permitted to include the \$284 within the \$48,015, charging \$1,448,042 in allowable costs to Federal program funds.

Board Jurisdiction

In response to the Grantee's appeal, OHDS has taken the position that the excess costs issue is not subject to the Board's jurisdiction. As stated above, the Board has previously held that it does not have the authority to award supplemental funds to a grantee. These issues have been viewed however, as a matter of remedy, not of jurisdiction. The OHDS notification in this case identified the excess cost as "not allowable," and informed the Grantee of its right to appeal to the Board. Under 45 CFR 16.5(a)(2), the Board has jurisdiction over a determination that a cost not allowable under the grant has been charged to the grant. Although the Grantee has admitted here that it did over-expend and requests a remedy which the Board has determined it is unable to grant under the circumstances presented here, this does not deprive the Board of jurisdiction.

OHDS has also taken the position that the Board is without authority and jurisdiction to sustain the Grantee's appeal with respect to the specific items of costs disallowed, since the Grantee is requesting that the Agency's rules and regulations be waived. OHDS reasons that its requirements are binding on the Board, citing 45 CFR 16.8(a), which provides that the Board is bound by all applicable laws and regulations. This argument has no merit with respect to the issue of jurisdiction. When an agency makes a determination of a type subject to the Board's jurisdiction, it is the Board which must decide whether the requirements cited as a basis for the determination are applicable, whether they are binding on the grantee, and whether they have been properly interpreted. If a grantee does not present arguments which would furnish an adequate legal basis for sustaining the appeal, this is a question of the merits of the appeal, not of the Board's jurisdiction.

Conclusion

For the foregoing reasons, we uphold the disallowance, in the reduced amount of \$48,015.

/s/ Donald G. Przybylinski

/s/ Robert R. Woodruff

/s/ Frank L. Dell'Acqua, Panel Chairman