

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Colorado Department of Social Services DATE: July 31, 1981
Docket Nos. 78-20-CO-HD
 79-17-CO-HD
Decision No. 200

DECISION

The Colorado Department of Social Services appealed from determinations by the Acting Regional Program Director, Administration for Public Services, Office of Human Development Services, dated March 20, 1978 and January 3, 1979, disallowing Federal financial participation (FFP) claimed under Title XX of the Social Security Act for training costs for the quarters ended September 30 and December 31, 1977 (March 20, 1978 determination) and March 31 and June 30, 1978 (January 3, 1979 determination). The appeals were assigned Docket Nos. 78-20-CO-HD and 79-17-CO-HD, respectively, and were considered jointly since they involved some common issues.

After the applications for review were filed in the two docketed cases, the Agency adjusted the amounts of the disallowances downward upon considering a part of the State's claim which it had previously deferred. (Letter to State dated September 17, 1979.) The amounts in dispute before the Board, as adjusted, were \$105,282 for Docket No. 78-20-CO-HD and \$90,320 for Docket No. 79-17-CO-HD. During various stages of the proceedings in the two cases, however, the Agency withdrew the disallowance with respect to several items and the State withdrew its appeal with respect to several other items. All of the items initially in dispute are identified separately below for clarity of the record, however.

The Board's decision is based on the applications for review, the Agency's responses to the appeals, the parties' responses to an Order to Develop Record issued by the Board Chairman, a telephone conference with the parties held by a member of the Board's staff, and subsequent communications by the parties individually by telephone and in writing.

Training student interns.

(Docket No. 78-20-CO-HD, Finding 1;
Docket No. 79-17-CO-HD, Finding 1)

The Agency disallowed FFP claimed in payments made to student interns on the ground that 45 CFR 228.85(e) provides that FFP is not available for "[e]mployment of students on a temporary basis, such as in the

summertime." The Agency later accepted the State's contention that the applicable regulation was 45 CFR 228.81(d), which provides that FFP is available for training "[p]ersons preparing for employment in the State agency in...positions...which directly relate to operation of the title XY program." The Agency maintained, however, that the costs were unallowable since the State had not shown that the individuals in question were "[l]egally committed to work for the State agency for a period of time at least equal to the period for which financial assistance is granted if employment is offered within 6 months after training is completed," as required by 45 CFR 228.83(a)(2)(iii).

In its response to the Order, the State identified the four individuals to whom the disallowance pertained, indicating that three of the four were not employed by the State after the termination of their training. The length of the fourth individual's employment by the State was not specified. The State did not contend that any of the individuals were legally committed to work for the State. (State's response to Order, p. 2.) In response to an inquiry made during the telephone conference, the State indicated that the fourth individual was not legally committed to work, and did not in fact work, the requisite length of time, and conceded that FFP for his training was not appropriate. (Letter dated May 14, 1981, Attachment, p. 1.) Accordingly, the Agency's disallowance for this item is sustained.

Travel costs for training of less than five days.

(Docket No. 78-20-CO-ED, Finding 3,
Docket No. 79-17-CO-ED, Finding 3)

The Agency disallowed FFP claimed for the quarters ended September 30, 1977, December 31, 1977, March 31, 1978, and June 30, 1978 for travel and per diem costs of State agency employees who attended training programs lasting less than five full days on the ground that under 45 CFR 228.84 such costs are allowable only for attendance at training programs which last at least five full days. That section provides, in pertinent part, that--

[c]osts matchable as training expenditures include:

- (a)(2) For State agency employees in full-time training programs of less than eight consecutive work weeks: per diem, travel and educational costs;
- (a)(3) For State agency employees in part-time training programs (part of work week, evenings, mornings): Education costs.

The State argued that neither these regulations nor the Social Security Act draws a distinction between training lasting less than five full days and training lasting five full days or more. It also noted that the Title XX Program Regulation Guide issued by HEW in 1975 to interpret the earlier version of the regulations contained no mention of such a distinction. Finally, the State argued that the Agency's interpretation of the regulation was unfair to states with large rural areas where state agency staff had to travel long distances to attend training programs. The Agency's position is that Section 228.84(a)(3) clearly indicates by the phrase "part of work week" that "part-time" means less than five full days.

The issue of the allowability of travel and per diem costs for training lasting less than five full days has been addressed in several prior Board decisions. Montana Department of Social and Rehabilitation Services, Decision No. 119, September 29, 1980; Alabama Department of Pensions and Security, Decision No. 123, October 31, 1980; Oregon Department of Human Resources, Decision No. 129, October 31, 1980; and South Dakota Department of Social Services, Decision No. 142, January 21, 1981. In those decisions, the Board found that the practice of the Agency's regional offices had been to allow travel and per diem costs incurred with respect to such training, and further, that it was Agency policy not to hold states to the Agency's interpretation of "part-time training" as training lasting less than five full days until the states received actual notice of the interpretation. The Board found in addition that the Agency's interpretation was clearly articulated in PIQ 77-88, and sustained the disallowances in those cases to the extent that they covered periods after each state received actual notice of PIQ 77-88 or its contents. The PIQ (Program Information Question) was a memorandum from the Acting Commissioner, Administration for Public Services (APS), responding to a question raised by the Region IV Director of APS. The memorandum was later incorporated into a series of Agency issuances which are periodically sent to the Regions and then distributed to the states for informational purposes.

In the Order to Develop Record issued in this case, the Agency was asked to provide a copy of any written issuance supporting its interpretation of "part-time training" of which the State had notice and to indicate when and in what manner such notice was given. The Agency responded that it had explained its interpretation at a conference held in Denver on January 25 and 26, 1978, which was attended by the Director of Staff Development, Colorado Department of Social Services. (Agency's response to Order, pp. 1-2.) The State conceded that the "part-time training" issue was discussed at the January 1978 conference, but stated that the State's representative at the conference

could not recall whether a definitive interpretation was given by the Agency. It argued that it should therefore not be deemed to have received actual notice of the Agency's interpretation until February 26, 1979, the date of OIDS/APS Region VIII, Regional Memorandum, OIDS/PS-79-29, an Agency issuance setting forth the Agency's interpretation. (Letter dated May 14, 1981, Attachment, pp. 1-2.)

The Agency has not verified the substance of the Agency's presentation at the January 1978 conference nor has it shown when given opportunity that any written notice to the State preceded OIDS/PS-79-29. Accordingly, we grant the appeal in full on this issue since all of the costs were incurred prior to the date of issuance of OIDS/PS-79-29.

Urban League Child Care Center.

(Pocket No. 78-20-CO-10), Finding 4;
Pocket No. 79-17-CO-10D, Finding 7)

The State claimed FFP for the quarters ended September 30, 1977, March 31, 1978, and June 30, 1978 for costs incurred under a contract with the Urban League Child Care Center to provide training. Although the costs were initially disallowed on the ground that the Urban League was an "expert" outside the State agency and that allowable costs for experts under 45 CFR 228.84(c)(1) did not include the types of costs claimed, the Agency later accepted the State's position that the Urban League was a provider agency and that the applicable provisions were 45 CFR 228.84(f), (g)(1) and (g)(2), which provide as follows:

(f) Provider agency staff development personnel. For provider agency staff development personnel (including support staff) engaged in providing training to State title XX agency staff or provider agency staff eligible for training under \$228.81 salaries and fringe benefits, travel and per diem.

(g) Provider agency training activities. (1) For experts outside the provider agency engaged to develop or conduct special programs: salary, fringe benefits, travel and per diem.

(2) For provider agency training activities directly related to the title XX program: cost of teaching supplies and purchase or development of teaching materials and equipment—for example, books and audio-visual aids.

The Agency maintained nevertheless that the costs claimed were unallowable on various grounds. It contended first that the costs claimed for a training coordinator and a child care planning coordinator employed by the Urban League on its Caretaker Training Project were unallowable since it appeared that they were not full-time trainers and performed duties unrelated to training. (Response to appeal, Docket No. 78-20-CO-HD, p. 4; Response to appeal, Docket No. 79-17-CO-HD, p. 5.) The State subsequently furnished a letter from the Director of the Urban League Child Care Department, dated April 15, 1980, which states that the training coordinator worked full-time on the project, although only 30 percent of her time was spent in direct training, and that the child care planning coordinator spent 20 percent of her time on the project, although none of it was devoted to direct training. The State also submitted a copy of a 12-month budget for the project which includes as line items salaries for a training coordinator and for a child care planning coordinator at "1/5 time." (Grantee's response to Order, Exhibit B.)

In response to an invitation to comment on whether this documentation was adequate to support the costs, however, the Agency stated that it could not examine the documentation unless the costs were identified by quarter claimed. (Confirmation of Telephone Conference, dated April 21, 1981, p. 2.) The State indicated that it was unable to provide this information, and the Agency stated that it could not allow the costs. (Letter dated May 14, 1981, Attachment, p. 2; Confirmation of Telephone Conversations, dated July 7, 1981.) The Agency's worksheets accompanying the initial disallowance identify the costs by quarter claimed as well as by month incurred, however, and presumably were based on State records which the Agency found satisfactory. (Docket No. 79-17-CO-HD, notification of disallowance, Schedules B-1, DD-2, DD-5, and DD-6.) Thus, we do not believe that a disallowance is properly based on the State's inability to identify the costs as shown in the budget by quarter claimed.

We find, however, that the State has not adequately responded to the question raised by the Agency whether the training coordinator and child care planning coordinator performed duties unrelated to training. In response to the Order's direction to provide documentation on this point, the State indicated that the individuals in question did not spend all of the time charged to the project in direct training, but failed to specify the nature of the duties performed at other times, except to state that the role of the child care planning coordinator was solely a "management role." (State's response to Order, Exhibit F, letter dated April 15, 1980.) Thus, except with respect to the costs allocable to the 30 percent of the training coordinator's time spent

on direct training, the State has not shown that the funds were expended for activities related to training. Accordingly, we sustain the disallowance with respect to the two individuals in question except for the allocable costs just indicated. Our decision does not preclude the State from presenting additional evidence to the Agency solely on the question whether the time not spent in direct training was devoted to training-related functions.

The Agency also stated that it would not allow costs identified by the State as "training materials" claimed under the contract with the Urban League Child Care Center, unless the State provided a breakdown of the costs by quarter. The State indicated that, by training materials, it intended to refer to the \$500 for curriculum materials shown on the budget for the Caretaker Training Project submitted with its response to the Order, but was unable to provide the breakdown requested by the Agency. (Confirmation of Telephone Conference, dated April 21, 1981, p. 2; Letter dated May 14, 1981, Attachment, p. 3.) The notification of disallowance and accompanying Agency workpapers do not show training or curriculum materials as a separate item, the first reference to training materials appearing in the State's response to the Order. (State's response to Order, p. 3.) Since the State has provided no way of ascertaining that the \$500 for curriculum materials corresponds to amounts disallowed by the Agency, no allowance can be made for this item.

The remaining costs disallowed under the contract with the Urban League Child Care Center are no longer in dispute. The Agency stated that secretarial salary and fringe benefit costs were allowable under 45 CFR 228.84(f) as staff support costs, and the State withdrew its appeal with respect to all other costs claimed under this contract. (Agency's response to Order, p. 2; State's response to Order, p. 3.)

David E. Barbee.

(Docket No. 78-20-CO-11D, Finding 4)

This item is no longer in dispute. In its response to the appeal, the Agency reduced the amount of the disallowance to \$1,574 after determining that some of the costs were allowable under 45 CFR 228.84(c)(1). (Response to appeal, p. 4.) The State subsequently stated that it did not wish to appeal this issue "any further." (State's response to Order, p. 3.)

Colorado Department of Institutions "TRACY Project" and Larimer County Mental Health Center.

(Docket No. 78-20-CO-11D, Finding 4;

Docket No. 79-17-CO-11D, Finding 4)

The State claimed FFP for costs incurred under contracts with the Colorado Department of Institutions for the "TRACY Project" and with the Larimer County Mental Health Center. The costs were disallowed

on the ground that the training was provided by outside experts and that, under 45 CFR 228.84(c)(1) pertaining to outside experts, FFP was available only for certain limited costs not including the ones disallowed. The State appealed, contending that the contracts were with provider agencies rather than with outside experts and that the costs were allowable under the portions of the regulation applicable to provider agencies. The Agency initially took the position that the State's argument was irrelevant since the State was unable to furnish a copy of any written contract between these providers and the State agency as required by 45 CFR 228.81(c)(1) and 228.70(a). The Agency stated, moreover, that in the absence of any written contracts, it was constrained to increase the disallowances to cover all costs claimed by the State for payments to these providers, including costs that were previously allowed. In its response to the Order, however, the Agency stated that it had determined that the Colorado Department of Institutions had satisfied the requirements for provider agencies for the time period in question and that the Agency was therefore reducing the amount of the disallowance of costs claimed under that contract to \$1,938 FFP. (Agency's response to Order, p. 5.) This left in dispute (with respect to the Colorado Department of Institutions) FFP claimed for operating expenses and for capital outlay, which the State claimed was allowable under 45 CFR 228.84(g)(2). That section provides that costs matchable as training expenditures include: "for provider agency training activities directly related to the title XX program: cost of teaching supplies and purchase or development of teaching materials and equipment...." The State argued that the costs in question were incurred for the "purchase or development of teaching materials and equipment" since they were incurred to directly train foster care providers. (State's letter dated July 2, 1981, p. 2.)

We conclude that the disallowance with respect to the remaining items was properly taken. The costs are identified in the audit workpapers (Notification of disallowance dated 1/3/79, Schedule DD3) as "Operating" and "Capital Outlay," categories which would not normally include teaching materials and equipment. Thus, some additional documentation would be required to show that the costs were in fact incurred for the purchase or development of teaching materials and equipment. The State indicated, however, that it "no longer has specific documentation of each capital outlay and operating expense incurred in the program." (State's letter dated July 2, 1981, p. 2.) In the absence of such documentation, we sustain the disallowance.

The State in effect withdrew its appeal with respect to the Larimer County Mental Health Center, conceding that the only contracts in existence did not comply with the requirement for a provider agreement in 45 CFR 228.70. (Letter dated May 14, 1981, Attachment; p. 3.)

Little High Child Care Association.
(Docket No. 79-17-CO-HD, Finding 7)

This item is no longer in dispute. The Agency stated in its response to the appeal that it agreed that the costs claimed were allowable under 45 CFR 228.84(f). (Agency's response to appeal, p. 6.) It subsequently clarified this remark, indicating that in addition to the secretarial and fringe benefit costs allowable under 45 CFR 228.84(f), printing costs were allowable under 45 CFR 228.84(g)(2). While the Agency stated that it was withdrawing the disallowance of \$368.41 (\$276.00 FFP) for these items, that amount pertains only to the quarter ended March 30, 1978. A chart attached to the Agency's response to the Order indicates that the Agency also intended to withdraw the disallowance of \$741.94 (\$556.46 FFP) pertaining to the quarter ended June 30, 1978. (Agency's response to Order, p. 3, and attached summary of disallowances.)

City and County of Denver Department of Social Services.
(Docket No. 79-17-CO-HD, Finding 7)

This item is no longer in dispute. The Agency withdrew the disallowance on the ground that the costs involved were allowable under 45 CFR 228.84(c)(1) and (2). (Agency's response to Order, p. 3.)

University of Colorado Medical Center.
(Docket No. 79-17-CO-HD, Finding 7)

This item is no longer in dispute. The Agency reduced the amount of the disallowance to \$1,301 FFP after determining that some of the costs were allowable under 45 CFR 228.84(f) and (g). (Agency's response to Order, pp. 3-4.) The State subsequently withdrew its appeal in view of the reduction of the disallowance. (Confirmation of Telephone Conference, dated April 21, 1981, p. 2.)

Matching share.
(Docket No. 78-20-CO-HD, Finding 8;
Docket No. 79-17-CO-HD, Finding 5)

This item is no longer in dispute. In its response to the Order, the Agency withdrew the disallowance of in-kind costs claimed by the State for the TRACY Project. (Agency's response to Order, p. 5.)

The State subsequently in effect withdrew its appeal with respect to those costs pertaining to the Larimer County Mental Health Center, conceding that the only contracts in existence do not comply with 45 CFR 228.70. (Letter dated May 14, 1981, p. 3.)

Miscellaneous issues resolved before issuance of Board's Order.

Docket No. 78-20-CO-FD--Finding 2--disallowance not appealed by State.
(See application for review, dated April 19, 1979, p. 1.)

Docket No. 79-17-CO-HF--Finding 2--disallowance not appealed by State.
(See application for review, dated January 30, 1979, p. 1.)

Docket No. 78-20-CO-HF--Finding 7--disallowance withdrawn by Agency.
(See Agency's response to appeal, dated April 6, 1979, p. 6.)

Docket No. 79-17-CO-HF--Finding 6--disallowance withdrawn by Agency.
(See Agency's response to appeal, dated April 6, 1979, p. 4.)

Conclusion.

For the reasons specified above, the appeals are granted in part and denied in part. The disposition of the various items is as follows:

Training student interns

Disallowance sustained in full.

Travel costs

Appeal granted in full.

Urban League Child Care Center

Child Care Planning Coordinator--Disallowance sustained in full.
Training Coordinator--Disallowance sustained except for 30 percent
of costs allocable to direct training.

Secretarial and fringe benefits--Agency withdrew disallowance.
Other costs-- State withdrew appeal.

David E. Parbee

Disallowance reduced by Agency; State withdrew appeal.

Colorado Department of Institutions "TRACY Project"

Reduced disallowance sustained in full.

Larimer County Mental Health Center

State withdrew appeal.

Mile High Child Care Association

Agency withdrew disallowance.

City and County of Denver Department of Social Services

Agency withdrew disallowance.

University of Colorado Medical Center

Agency reduced disallowance; State withdrew appeal.

Matching Share

"TRACY Project"--Agency withdrew disallowance.
Larimer County Mental Health Center--State withdrew appeal.

Miscellaneous Issues

See text above.

/s/ Norval D. (John) Settle

/s/ Alexander G. Teitz

/s/ Donald F. Garrett, Panel Chair