

DEPARTMENTAL GRANT APPEALS BOARD
THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

DATE: March 7, 1974

Re: University of Texas Medical School at San Antonio
Docket No. 4, Grant No. 09-P-56107/6-02 under Sec. 1110,
Social Security Act - Decision No. 1

This is an appeal pursuant to 45 CFR Part 16 from the action of the Social and Rehabilitation Service on June 29, 1973, in reducing the second year funding of a grant to Appellant for a Social Welfare Regional Research Institute by an amount equal to the carry-over from the first year funding of that grant. This decision is made on the basis of the documents submitted to the Board. The undersigned members of the Grant Appeals Board have been designated as a panel of three for the disposition of the instant case.

BACKGROUND

The initial grant to the University of Texas Medical School at San Antonio was funded by Region VI in Dallas on June 1, 1972, in the amount of \$247,340 for the Regional Research Institute (RRI) to be operated in conjunction with the School of Social Work, University of Texas at Austin, and for a study of the impact of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services for eligible children under Title XIX of the Social Security Act. (Exhibit #3, Grantee's Application for Appeal)

Later during the first-year funding period, it became apparent that there would be a fairly substantial carry-over from the first year of operation in relation to the budget for the RRI. (Exhibit #3) The Regional Office denied, however, certain requests for changes in the project budget because more adequate use of the funds could be made if they were carried over into the next budget year. (Exhibit #1, Memorandum from the Acting Regional Commissioner, SRS, to the Associate Administrator for Management, SRS, dated October 15, 1973) At the request of the SRS Regional Office, Appellant made an application for a continuation grant for the RRI for \$100,000, the recommended level originally contemplated for the support of the RRI for the second year. (Exhibit #3, Attachment #3) In that application, the University of Texas proposed to share in the costs to the minimum extent of 5 percent of the total cost.

FACTS

In reply to a clarification of the funding status (Exhibit #1), particularly in regard to the 1972 carry-over funds, Appellant submitted a revised application for a project continuation grant for the year ending May 31, 1974, in the amount of \$155,229, which included \$55,229 in carry-over funds. (Exhibit #3, Attachment #5) On or about June 10, 1973, Appellant received from the Regional Commissioner a Notice of Grant Awarded dated June 6, for the budget period beginning June 9 in the amount of \$155,229, including the unobligated balance from the prior budget period. (Exhibit #3, Attachment #6) The Appellant had been previously notified by a letter dated October 16, 1972, from William C. Pembleton, Chief, Research and Demonstration Project Grants Branch, Division of Project Grants Administration, SRS, that authority over grants for the RRI had been delegated to the SRS Regional Commissioner. (Exhibit #5) This authority had been delegated by memorandum of July 17, 1972, signed by James F. Garrett, Assistant Administrator, ORD. (Exhibit #6) Subsequently, a revised Notice of Grant Awarded dated June 29 was issued for the same period and with a total budget of \$100,000, showing a decrease of new funds to \$44,771 from the originally projected project budget of \$100,000, the remainder being made up by application of the prior unobligated balance. (Exhibit #3, Attachment #8) This constituted a reduction of \$55,229 from the earlier Notice of Grant Awarded. That action is the subject of this appeal. The document stated: "Total budget is decreased to \$100,000 to comply with FY 1973 budgetary restrictions." Still later the original project grant for the period June 1, 1972 to May 31, 1973, was reduced by \$147,340 to \$100,000 to separate the EPSDT Evaluation of Impact Study award from the Social Welfare Regional Research Institute award. At the same time, a separate award (Grant No. 18-P-57603/6-01) in that amount of \$147,340 was made for the EPSDT Program Evaluation and Impact Study, and the end of the original budget period extended from May 31, 1973 to June 30, 1973.

ARGUMENTS

The Appellant contends that the decision reducing the RRI's second year request by \$55,229 constituted a "partial voidance" of that grant and requests a reversal of that action on the basis that (1) the loss of the \$55,229 will require it to void personnel commitments made on the basis of the earlier award (Exhibit #3, Attachment #10), (2) such a loss will cause a substantial reduction in the momentum gained by the Institute during its first year, and (3) the reduction of funds places an equal strain upon that part of the Institute work conducted at the School of Social Work at Austin, particularly since the reversal was made retroactive after costs were incurred and operating plans were implemented. (Exhibit #3)

The Division of Project Grants Administration, SRS, contends that the original action taken constituted a basic mistake resulting from a misunderstanding as to the allowed use of unexpended carry-over funds in the light of the restraints placed on SRS's overall R&D budget. (Exhibit #2, Memorandum of October 17, 1973, from the Director, Division of Project Grants Administration, to the Executive Secretary, Grant Appeals Board) Moreover, \$21,981 was later restored to the EPSDT program so that the total for the two grants in 1973 is only \$14,101 less than the combined funding level in 1972. The Grant Appeals Panel notes, however, that while \$21,981 was restored, the grant was extended by an additional month.

DISCUSSION

The reduction in the RRI funding was not based on any failure of the Appellant to comply with the terms and conditions of the grant. Rather, it was based upon SRS considerations. Appellant and the University of Texas at Austin were entitled to rely upon the original continuation grant, which was made by the Office having the authority to make such a grant. Moreover, that action was consistent with prior action by SRS in denying requests for budget changes during the initial budget year because more adequate use of the funds could be made if they were carried over into the next budget year. Also, the commitments made by Appellant involved commitments of its own funds made in reliance upon the original continuation award. (Exhibit 3, Attachment #10, letter of July 11, 1973 to Dr. Henry Martin from Charles W. Laughton) Finally, the original continuation grant was by its term made subject SRS Policies applicable to Research Grants. Section IV-C of those Policies specify that a grant may be terminated for failure of the grantee to "comply with the terms and conditions of the grant; when sufficient funding for continued support is unavailable due to budget or other fiscal considerations; or when continued funding would be inappropriate because of restructured program objectives or realigned program priorities." (Exhibit #9, DHEW Publication (SRS) 72-04001 dated July 1972) The decrease in the award merely cited FY 1973 budgetary restrictions relating to the use of carry-over funds without alleging any unavailability of funds; no reference was made therein to restructured program objectives or realigned program priorities.

The fact that the grant award for the EPSDT was later increased by \$21,981 does not alter the fact that Appellant made commitments under its RRI budget on the basis of a grant of \$155,229.

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DECISION

The appeal is allowed in full, and \$55,229 shall be restored to grant 09-P-56107/6-02.

/s/ Thomas Malone, Chairman

/s/ David Dukes

/s/ William Van Orman