

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Human Services, Inc.
Docket No 73-3
Decision No. 88

DATE: March 3, 1980

DECISION

Human Services, Inc., is a Community Action Agency, formerly known as Community Action Program of Bartholomew, Brown, and Jackson Counties, Inc., conducting among other programs a Head Start project originally funded by GEO and later by HEW. An HEW audit for the period February 1, 1974, to January 31, 1975 (Head Start Grant No. 4176, Program Year I, Action Nos. H/1, H/0), found that the grantee did not have satisfactory internal controls, had failed to document expenses appropriately, and had extensively commingled funds of various programs without regard to sources or purpose. (Audit Report Audit Control No. 05-61454.) Based on their examination of the grantee's records, reconstructed as completely as was possible, the auditors found a number of expenses that were, in their view, definitely not properly charged. After eliminating questioned items amounting to \$10,288 with respect to Head Start, the auditors recommended that a maximum of \$100,521, plus some share which they did not determine of \$18,135 which had not been allocated among grantee's various programs, be allowed to the Head Start program. The determination of the validity of the costs as a whole and the distribution of the unallocated portion was left to the respective federal agencies based on programmatic benefits received. (Audit Report, pp.3, 22-28.)

HEW Region V disallowed \$10,288, the costs questioned in the audit report, and allowed \$100,521 in Head Start expenses as recorded after adjustments plus \$7,525 in previously unallocated costs found to be justified and reasonable. The Region directed the grantee to immediately restore and have available for reprogramming \$10,684, identified as "the difference between the Total of the grant for that year, \$97,121, less the Federal share of expenditures, \$86,437." The Region computed the federal share as 40% of \$108,046 (\$100,521 + \$7,525).

Grantee appealed this decision to the Board, asserting that the computational method used by the Region was incorrect, that local cash contributions of \$20,104 should have been applied to the \$10,288 in disallowed costs, and that the federal share should have been computed as a percentage of total costs, whether allowable or not, because they were, in fact, "actual costs" of the program. In addition, the grantee claimed to have documentation of \$8,852 in in-kind expenditures which should have been included in allowable costs, and which the grantee claimed had been disregarded by the auditors simply because they were not posted to a ledger.

The Region's response to the appeal was based solely on an Audit Agency memorandum and failed to address certain specific questions asked by the Executive Secretary of the Board. The auditors did, in their memorandum to the Region, state that the reason that the in-kind expenditures were not accepted was not that they had not been posted to a ledger but that the grantee did not adequately accumulate, summarize, or record the contributions.

Non-Federal Share

The Panel Chairman then issued an Order to Show Cause, intended to clarify and narrow the questions in dispute, directed primarily to the grantee. In that Order, the Panel Chairman tentatively took the position that grantee's arguments with respect to computation of the federal share were inconsistent with basic rules of federal grant law. The Panel Chairman pointed out that program funds, which include amounts derived from federal or non-federal sources, may only be spent for the approved program. (General Conditions Governing Grants Under Title II (except Section 222(a)(4)) and III-B of the Economic Opportunity Act, submitted by grantee as an attachment to the Grant No.4176, I/H/O Statement of Grant Award.) Further, expenditures, to be counted, must lie within the limitations on expenditure of program funds, including restrictions as to when costs may be incurred, how they must be supported, and to what purposes they must be related.

Assuming that the grantee's method of computation should be rejected, that the in-kind contributions were not acceptable, and that the disallowances by the auditors were appropriate, the Panel Chairman tentatively concluded that grantee's local cash contribution of approximately \$20,104 would be sufficient to support a maximum of \$80,417 (rounded) in federal share, the relevant statute providing for a 20/80% split. 42 U.S.C. 2812(c)(1970). The Panel Chairman directed the grantee to show cause why the appeal should not be dismissed on the ground that the in-kind expenditures were not properly documented, local share was inadequate to support the size of the program authorized and the size of the program conducted, and funds drawn down from the federal grant had been utilized for purposes not authorized by the grant. Grantee was given the opportunity to persuade us that this analysis of the federal/non-federal share issue was incorrect, to identify specific items which may have been improperly disallowed, and to furnish suitable documentary evidence of grantee's claimed in-kind expenditures.

In response to that Order, grantee expressly elected to argue its case further only on the issue of in-kind contributions. Accordingly, the issue of computation of the non-federal share is decided against the grantee on basis of the analysis stated above.

In-Kind Expenditures

Grantee did submit in response to the Order documentation which it claims substantiates \$7,636.50 in in-kind contributions to Head Start during the

grant period. Grantee indicated that it had reduced the \$8,852 originally claimed because certain individual documents upon which that figure was based would not meet the Board's "technical requirements." The documents submitted are described by the grantee as being in original, not reconstructed, form.

At that point, rather than analyzing each of the documents submitted, we decided to provide the Region with an opportunity to make an initial determination of the allowability of the in-kind expenditures claimed and, if appropriate, to reach a resolution of this issue with the grantee. We informed the Region that, if it could not negotiate a resolution with the grantee, it should notify us of its determination, setting forth sufficient detail to enable the grantee to respond.

The Board Chairman subsequently granted an extension of time to the Region to allow it to consult with the Audit Agency, but reminded the Region that the responsibility to decide in the first instance was with it, not with the Audit Agency. The Region's response was to submit a late and improperly filed memorandum, stating generally the principles upon which allowability of costs are determined and concluding that none of the grantee's documentation was acceptable. Attached to the Region's response was an Audit Agency analysis of the documentation somewhat more detailed than the Region's memorandum but lacking any specific citation to grant requirements and based, in part, on "the possibility that documentation was created after the completion of the audit."

As indicated in the Order to Show Cause, in-kind contributions, while acceptable and within certain limits as valid as cash contributions, are in practice often loosely documented, padded and exaggerated. Nevertheless, if real in-kind contributions have been made and can be documented, they are ordinarily accepted. We were not prepared, therefore, to adopt the Audit Agency analysis wholesale, when it appeared to us that grantee's documents, while clearly insufficient in certain regards, evidenced some community support for grantee's project unless one assumed, contrary to grantee's assertion, that they were totally fabricated. Based on our own analysis of the documents, we concluded that some clearly did not meet required conditions, some appeared to be trustworthy evidence of services provided although these services may have been overvalued, and some appeared to represent allowable costs of benefit to the program. These conclusions were modified somewhat, in grantee's favor, as a result of documentation and comments submitted by grantee in response to an opportunity provided to the parties, to comment on a draft decision. Our final conclusions are set forth below.

Specific Items Disallowed

We find that the following items totaling \$5,855.46 do not represent allowable costs and, therefore, disallowance by the Region is upheld for the reasons stated below:

- 1) Documents identified by grantee as items 33-40 are "out-of-town expense" or "consultant services" forms purportedly representing consultant services donated by a T. D. Wallsteadt and valued at \$100 per day. "Technical assistance to H.S. Director" is listed on the forms under "purpose," but no indication is given as to what the professional qualifications of T. D. Wallsteadt were other than an identification as "consultant." T. D. Wallsteadt signed these forms on a line provided for signature of an employee. Four out of the eight forms contained no supervisor's signature.

The Special Condition on Volunteer Services attached to the I/H/O grant award document ("Special Condition") states that required records must show the professional qualifications of the volunteer, the specific duties performed, the volunteer's signature, and a signature of a supervisory employee. The Special Condition also states that "Services will not be treated as partially volunteered. No services for which a person is compensated, even though the compensation may be low, shall be treated as volunteered." It is possible that T. D. Wallsteadt was an employee of Human Services, Inc., or was the consultant referred to in the audit report where the auditors questioned consultant services costs for a variety of reasons. (Audit Report, pp.17-18.)

The \$1600 claimed for the services of T. D. Wallsteadt is disallowed based on the Special Condition cited above.

- 2) Items 58, 59, and 62 appear to represent cash rather than in-kind contributions. The \$85 claimed for these items should not be allowed as in-kind expenditures, and even if these cash contributions were not previously claimed as such, grantee has produced no documentation showing they were applied to allowable costs.
- 3) Items 48-57, 60-61, and 63-92 represent a variety of donations, all reported by Thelma Routier, in April 1974, and all related either to a bazaar or fashion show. There is nothing to indicate that these items in any way benefited the Head Start project, although it is possible that the proceeds of the events went to the project, but if that is so, the proceeds should have been claimed as cash contributions. Item 96 represents, in part, a claim for \$400 of Thelma Routier's time working on a style show in March or for "raffling tickets for card table." This time is valued at \$2 per hour for a total of \$400. Paragraph G. 33. of Part II of Appendix F to 45 CFR Part 74 states that "costs related to fund-raising appeals are unallowable.... "

The \$1,111.94 in costs represented by the donated items and the \$400 for Thelma Routier's time are accordingly disallowed on the

ground that the costs were not of direct benefit to grantee's Head Start project or were related to fund-raising appeals. Furthermore, Thelma Routier's time should have been valued at the \$1.60 per hour specified as the value of unskilled services in the Special Condition referenced above, rather than the \$2 per hour claimed.

- 4) Item 25 represents \$4.52 claimed for services of county hospital attendants. No specific hours are listed, the form is unsigned, and it is not clear how these services were of benefit to the grantee's project nor how they were valued. This claim is disallowed on the ground that this documentation is inadequate to meet the requirements of the Special Condition outlined above.
- 5) Item 97 identifies Ellen Trowbridge as a teacher's aide, claiming \$878 of services at \$1.90 per hour. Although the form lists the time period June-November 1974, it fails to list any specific dates or times and does not give Ellen Trowbridge's professional qualifications. This amount is disallowed on the ground that the services claimed do not meet the Special Condition requirements.
- 6) Item 98 claims \$1624 at \$2.90 per hour for the time period October 1973 to May 1974 for the services of Shirley Henry, identified as a teacher's aid but also called Head Start Director. Shirley Henry signed other forms as a supervisor of volunteers and there is no signature of a supervisor for her services. No specific dates or times are given.

This claim is disallowed on the grounds that it does not meet the Special Condition requirements described above, particularly as it appears that Shirley Henry was possibly compensated as an employee for at least part of her services, and the Special Condition states that services will not be treated as partially volunteered.

- 7) Item 93 is a claim for 100 hours of volunteer services performed by Randy Pentschler from October 1973 to May 1974, valued at \$150. There are no specific dates or times given and the volunteer's signature does not appear on the form. This amount is disallowed on the ground that the Special Condition was not met.
- 8) Item 44 is a claim for \$2 of volunteer time spent "cooking dinner-BRJ-CAP." This may have been an entertainment cost within the meaning of Paragraph G.12. of Part II of Appendix F to 45 CFR Part 74 and was not clearly of benefit to Head Start. This amount is disallowed on the basis of Paragraph G.12. and, alternatively, because the services were not of benefit to grantee's Head Start project.

Specific Items Allowed in Part

Certain costs identified below are allowable, but at total value of \$1395.14 rather than the \$1718.04 claimed.

- 9) Documents identified by grantee as items numbered 3, 16-24, 26-32, and 41-42 apparently represent costs of a Halloween Party and a Christmas Party for Head Start students. The cost principles of Subpart Q, Appendix F, of 45 CFR Part 74 provide at Paragraph G.12. that "costs of amusement, diversion, social activities, ceremonials, and incidental costs relating thereto ... are unallowable." We conclude, however, that this provision was not meant to apply in the context of a Head Start Program to activities for students intended to bring about a greater degree of social competence in children of low income families. (Cf. Head Start Program Goals, 40 FR 27563, June 30, 1975, 45 CFR 1304.1-3.) Group socialization experiences are a legitimate part of a Head Start project, and community contributions to these experiences are of benefit to the project and may be a valid in-kind expenditure. The disallowance of \$277.34 claimed for these costs is, therefore, reversed.
- 10) Items 11-15 represent a variety of donated items valued at \$49, including several paintings donated to "H.S. room" and materials and services related to "aprons." It appears that these items benefited the Head Start project and are allowable costs.
- 11) Items 1,2, 4-10, 94 and 95 are volunteer sign-up sheets. In general, these sheets appear to meet some of the Special Condition requirements in that dates, times, and volunteer and supervisor signatures are given. The services are valued, however, at \$2.20 per hour rather than the \$1.60 for unskilled services specified in the Special Condition. Furthermore, certain individual aspects of some of these claims appear to be deficient. Item 2 contains no supervisor's signature. Item 6 does not identify the job performed. In Item 7, the names of the volunteers appear to have been written by the supervisor rather than the volunteers themselves. Eliminating these items as not meeting the Special Condition requirement and revaluing the services at \$1.60 per hour would reduce the total allowable claim for these volunteer services from \$1232.70 to \$856.00.
- 12) Items 43, 45, and 46 appear to represent volunteer services of a Billy (or Willie) Arnold, giving the number of hours worked on specific dates in "making picnic tables," which appears to have been of benefit to the Head Start program. No professional qualifications are stated for Mr. Arnold on the forms, but grantee has submitted a statement, signed by Mr. Arnold, that in 1974 his hourly wages as a skilled union tradesman were \$8 an hour. We

have determined to accept this documentation and allow the full \$176 claimed for the services.

- 13) Item 96 includes a claim for \$46 for 23 hours of Thelma Routier's time for evaluating Head Start centers. Nothing on the form indicates her professional qualifications for such evaluation. This amount is disallowed at the rate claimed on the ground that the services claimed do not meet the Special Condition requirement of a showing of professional qualifications but allowed at the rate of \$1.60 per hour, or \$36.80.

Thus, \$1,395.14 is allowed on the ground that grantee has produced documentation of these costs which appears to meet the Special Condition and evidence valid in-kind expenditures, and the disallowance with respect to these items is upheld to the extent of \$385.90, for a total disallowance of \$6,241.36 of the \$7,636.50 in in-kind expenditures claimed.

Grantee has objected to the amount of time it has spent clearing up a financial problem created by people who are no longer working for grantee and has objected to its integrity being questioned although its documentation of in-kind expenditures in years other than the year in question have been satisfactory to the auditors. The fact is, however, that the documentation relating to the year in question did not satisfy the auditors and is even less satisfactory to us, presented as it is in an appeal where its reliability is less than if the auditors had examined the documents themselves at the time of the audit. Furthermore, grantee cannot absolve itself of responsibility for accounting for federal funds in the year in question by blaming former employees. It is clear from the record that there were grave deficiencies in grantee's recordkeeping in that year. In light of the claim by grantee that the in-kind documentation was offered to the auditors and that their failure to examine the documents carefully at the time was due to an interruption in the audit, and in light of the Region's failure to present sufficiently clear reasons as a basis for its refusal to accept any of grantee's documentation, however, by forwarding a tentative decision in draft form, we offered the grantee another opportunity to justify some of the costs it claimed. Grantee met that burden, in part, but to the extent that grantee failed to meet that burden because it could not or would not produce the necessary documentation, grantee must bear the consequences.

Conclusion

For reasons summarized above and discussed more fully in the Order to Show Cause issued in this case, we uphold the disallowance to the extent that it is based on the agency's view that grantee's non-Federal share cannot be applied here to cover disallowed costs. With respect to grantee's claimed in-kind expenditures, we hold that grantee has shown that it had \$1,395.14 in allowable in-kind costs for a total non-Federal contribution of \$21,499.14. Grantee has requested in its letter of October 13, 1979,

that it be allowed to use excess non-Federal, non-cash, in-kind contributions received in its current year to compensate for the remaining Federal balance due for Program Year I. This is a matter of the discretion of the agency although the Board encourages such arrangements.

/s/ David V. Dukes

/s/ Thomas Malone

/s/ Malcolm S. Mason, Panel Chairman