

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Utah Department of Social Services
Docket No. 80-66-UT-HD
Decision No. 130

DATE: October 31, 1980

DECISION

The Utah Department of Social Services (State) requested reconsideration of a decision of the Office of Human Development Services (Agency) dated March 19, 1980, disallowing Federal financial participation (FFP) in expenditures claimed as training costs under Title XX of the Social Security Act (Act). The Agency determined that \$10,030 was not allowable because the State had charged travel and per diem costs for training programs which lasted less than five full days during the period from October 1, 1976 through September 30, 1977.

This decision is based on the State's application for review and the parties' responses to an Order to Show Cause issued by the Board Chairman. In addition, consistent with notice given to the Office of General Counsel, this decision takes into account documents and briefs regarding the issue of travel and per diem costs which were submitted to the Board in those cases disposed of by DGAB Decision No. 119 (Montana Department of Social and Rehabilitation Services, September 30, 1980), as well as in DGAB Docket Nos. 80-59-AL-HD and 80-76-OR-HD. Further, the pertinent findings and conclusions in Decision No. 119 are incorporated by reference herein.

Background

Title XX of the Act provides at Section 2002(a)(1) that a state shall be entitled to FFP for services provided to achieve the goals enumerated in the enabling legislation. Services for which reimbursement is available include expenditures for personnel training and retraining. Section 2002(a)(2) of the Act further provides that no payment may be made for expenditures, other than personnel training or retraining, which exceed a state's pro rata share of the appropriations authorized for Title XX expenditures during the fiscal year. Thus, the question of whether an expenditure is an allowable training cost may have a significant effect on the FFP available to a state.

The regulations governing expenditures for training and retraining, 45 CFR 228, Subpart H, were amended on January 31, 1977 (42 FR 5848). The amendment resulted in changes in the organization and terminology of 45 CFR 228.84 - - "Activities and costs matchable as training expenditures." The earlier version of the section had been published on June 27, 1975 (40 FR 27354) and, as pertinent to this case, read as follows:

Costs matchable as training expenditures include:

(c) Payment of travel, per diem and educational expenses of employees while they are attending training programs for less than eight consecutive work weeks;

(d) Payment of educational expenses (tuition, books, supplies) for employees on part-time educational leave (part of the working week, evenings, mornings).

As pertinent, the regulations were amended in 1977 as follows:

Costs matchable as training expenditures include:

(a) State agency employees.

...

(2) For State agency employees in full-time training programs of less than eight consecutive work weeks: per diem, travel and educational costs;

(3) For state agency employees in part-time training programs (part of work week, evenings, mornings): Education costs.

The Agency relied upon 45 CFR 228.84(a)(3) (1977) in disallowing the claim and stated, "This part has been interpreted to mean that for any training lasting less than five full work days (including travel), only educational costs are allowable."

The State protested the disallowance on the basis that the Agency was not applying the regulations uniformly among the states. The State, which is in Region VIII, noted that the Agency's Region X disallowed FFP which the State of Alaska claimed for travel and per diem costs only for periods after a written interpretation of the regulations, Policy Interpretation Question (PIQ) 77-88, was issued on September 14, 1977. Region X stated that "... the policy on short-term training was not absolutely clear until" that time, and concluded, "... we will not hold you to this more restrictive

interpretation for prior periods." The State of Utah asked that it receive the same treatment as those states in Region X. All of the costs disallowed in the instant case were incurred before the issuance of PIQ 77-88.

The Agency argued in response to the Order to Show Cause that 45 CFR 228.84(a)(3) on its face clearly precludes FFP in travel and per diem costs incurred for training programs lasting less than five full days. It contended that the decision made by Region X in the case of Alaska was an isolated one and does not provide any basis for a decision in the State's favor in this case.

Discussion

In Decision No. 119, noted above, the Board relied specifically on Information Memorandum HDS-IM-79-10 (Administration for Public Services) which was issued on August 23, 1979 to all state agencies administering social service programs under Title XX of the Act. The memorandum transmitted a complete set of PIQs to the states and asserted, as pertinent to this matter:

Since these interpretations have not been available on a routine or uniform basis, states will not be held accountable for administering their programs in accordance with PIQs issued up to and including September 1, 1979 until receipt of them, unless they have previously been given actual knowledge of the contents.

Upon consideration of this memorandum, the Board found in Decision No. 119 that it was Agency policy not to hold a state accountable for the policy interpretation contained in PIQ 77-88 until such time as the state received actual notice of the interpretation. In the case now before us, the State could not have received or had knowledge of the contents of PIQ 77-88 prior to or during the period involved in the disallowance because PIQ 77-88 was not issued until after the costs in question were incurred. There is no other evidence that the State was otherwise informed of the interpretation during the period in question. Thus, by the terms of the Agency's own policy, the disallowance was improperly taken.

The Board notes that Information Memorandum HDS-IM-79-10 (APS) also provides that, "... to the extent a PIQ merely states the ONLY reasonable interpretation of a statutory or regulatory provision, States would be bound to comply with that interpretation even in the absence of a PIQ." This proviso, however, is inapplicable to the facts of this case. The Board also found in Decision No. 119 that regardless of the Agency's

official policy concerning Federal sharing in travel and per diem costs for training programs which lasted less than five full days, the prior practice of the Agency's field components was to allow FFP for training programs of shorter duration.

Conclusion

The Board reverses the Agency's disallowance of travel and per diem costs for the period from October 1, 1976 through September 30, 1977 and finds that the State is entitled to \$10,030 FFP claimed for that period.

/s/ Clarence M. Coster

/s/ Norval D. (John) Settle

/s/ Donald G. Przybylinski, Panel Chair