

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Florida Health Care Plan, Inc.  
Docket No. 80-23  
Decision No. 133

DATE: October 31, 1980

DECISION

By letter dated January 21, 1980, Florida Health Care Plan, Inc. (Grantee) appealed from a decision of the Public Health Service (PHS) Grant Appeals Board dated December 20, 1979, directing Grantee to return \$37,316 of a \$567,906 PHS grant for the development of a health maintenance organization. Grantee is appealing items which were disallowed for alleged lack of adequate (or any) supporting documentation totalling, by Grantee's calculation, \$31,432. 1/

After an exchange of correspondence with the parties to clarify the issues as well as the amounts in dispute, on August 15, 1980, this Board issued an Order to Show Cause tentatively indicating that Grantee had provided adequate documentation for \$7,000 in legal costs; but not for \$15,412 in salaries and wages, \$1,420 in travel costs, and separate other cost items of \$4,297 and \$7,278. In its response dated September 3, 1980, PHS declared itself "in basic agreement" with the proposed disposition of the case. Grantee argued, in letters dated August 15, 1980, and September 3, 1980, that the documents in the PHS Board's appeals file furnished by PHS on July 10, 1980, provided additional support for Grantee's claims to \$15,412 in salaries and wages and \$7,000 in legal costs. Concerning the disallowance related to travel costs, it set out to whom and for what purpose six checks totalling \$1,420 were written, and acknowledged that \$7,278 in unsupported charges "still remains a questionable item." Grantee did not comment on the \$4,297 disallowance.

Background

A total of \$567,906 was awarded to Grantee in a series of four consecutive grants covering the period from July 1, 1971, to June 30, 1975. No Grantee participation was required for the Year 02 and Year 03 grants, but the grant award notice for the Year 01 grant listed \$17,000 "grantee support" and the notice for the Year 04 grant identified \$18,500 as "required grantee participation."

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1/ The exact amount in dispute in this appeal was unclear. The discrepancies were discussed in some detail in the Show Cause Order and that discussion will not be repeated here. Based on the discussion in the Show Cause Order, the Board used the PHS Board total of \$37,316 as a starting point, minus those amounts derived from issues determined in Grantee's favor, to arrive at the amount of the disallowance we uphold.

The (then) Health, Education, and Welfare Audit Agency (HEWAA) conducted an audit including an on site review from May 24 through August 27, 1976. An audit report issued February 16, 1979, criticized Grantee for the lack of adequate management controls and statistical gathering procedures, which it found resulted in "untimely, inaccurate, and unreliable financial and statistical information, and in some instances, loss of funds." The report also noted Grantee had claimed \$57,771 in unallowable costs and that an additional \$54,366 of its claimed expenditures was not supported by adequate documentation. Grantee was invited to comment, and did.

In a letter to Grantee dated August 9, 1979, the Office of Health Maintenance Organizations (OHMO), PHS, announced the results of its review of (1) the audit report, (2) Grantee's comments contained in the report and subsequent thereto, and (3) a site visit by OHMO. Grantee was directed to refund \$55,393.

Grantee appealed some of the OHMO disallowance to the PHS Grant Appeals Board which affirmed most of the items and reversed one. In its decision the PHS Board also recalculated the remaining amount to be refunded as \$37,316, including the items not appealed. Our decision further reduces that amount to \$29,906.

#### Discussion

Grantee has met its burden of documenting costs in two disputed areas--legal services and travel. It has not met that burden with respect to the other items at issue in this appeal.

#### Legal Costs

In its Order to Show Cause the Board tentatively indicated it would find that \$7,000 in expenditures for legal services claimed under the Year 04 grant was adequately supported. PHS in its response to the Order accepted this finding. 2/

This being a Year 04 grant claim, the percentage of the federal share is 88 percent (calculated as indicated in the Order), or \$6,160. The \$37,316 disallowed is accordingly reduced by \$6,160.

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2/ However, PHS characterized the evidence underlying this proposed finding as "singular, undocumented explanations that are presented retroactively by grantees." PHS perhaps overlooked the conclusion of the regional grants management official in September 1978 (cited in the Order) that all \$10,000 of legal fees claimed were "reasonable and applicable to the grant," as well as OHMO's acceptance of the other \$3,000 in legal costs on the basis of a bill paid "for services rendered" (also cited in the Order).

### Travel Costs

A total of \$1,420 claimed as travel costs under the Year 04 grant was disallowed because Grantee allegedly did not document the costs as grant-related. Grantee asserted in its appeal to the PHS Board that it had not been given sufficient information to identify the \$1,420. OHMO represented in its October 23, 1979, letter commenting on Grantee's appeal that "the audit work papers indicate that this cost was the face amount of a single check and that this information and the check number were provided to FHC at the audit exit conference."

Grantee denied this, and at this Board's request PHS furnished the stub numbers and amounts of six checks totalling \$1,419.76. Grantee explained that one was for a consultant's visit to Grantee; the others were related to two trips to Washington, D. C., by Grantee officials. Grantee stated unequivocally that all three trips were made in connection with grant activities. PHS did not contradict or even comment on Grantee's explanation, although specifically invited to do so in a telephone conversation between PHS and Board staff on September 2, 1980.

We believe that Grantee has now sustained its burden of documenting this travel cost as appropriately charged to the grant, particularly in the absence of any contrary argument by PHS after being offered an opportunity to comment. This, too, is a Year 04 grant claim, the federal share of which was calculated at the 88 percent rate, or \$1,250. The amount to be refunded is thus further reduced by \$1,250, to \$29,906.

### Salaries and Wages

A total of \$19,709 disallowed was identified by HEWAA as the difference between \$124,456 in cancelled checks written on a bank account maintained for the grant and \$104,747 shown by Grantee's other books and records as having been disbursed for Year 04 purposes (Audit Report, p. 41). Of the amount disallowed for this reason, \$15,412 was identified as the difference between \$73,207 claimed by Grantee as having been expended for salaries and wages and \$57,795 shown in the books and records as having been expended on this item. Grantee's explanation was that the percentage of time spent by some of its employees on Year 04-funded development activities (rather than on non-funded operations activities) was calculated and applied to their salaries to compute the Year 04 cost for those employees. (*Id.* at 67). The auditors found that this was implemented by multiplying the employee's salary (as determined from the quarterly tax returns) by the percentage budgeted for the position.

Grantee was obliged as a condition of the Year 04 grant to use grant funds only for developmental purposes and to maintain an accounting system to distinguish monies used for developmental purposes and monies used for operational purposes (See Notice of Grant Award, Year 04). The HEWAA noted that Grantee had given written assurance that it had established a separate bank account for grant

proceeds, and would maintain a separate cash disbursements journal and adequate documentation as to the propriety and classification of claimed expenditures (Id. at 41).

Grantee does not deny being aware that PHS grant policy requires either:

- (1) Monthly after-the-fact reports of the distribution of effort for individual professional staff members, or
- (2) An adequate appointment and workload distribution system accompanied by monthly reviews and a reporting of any significant changes in the workload distribution of each professional staff member, and
- (3) Time and attendance and payroll distribution records for non-professional employees. PHS Grants Policy Statement (1974), p. 19.

Grantee points out that the Year 04 grant commencing July 1, 1974, was not awarded until November 11, 1974, and contends that it did not institute the required time and effort reporting in July because it was never sure whether a grant would be approved (Letter dated March 10, 1980). The PHS Board found that if Grantee was not able to meet the requirement for documentation, it could have requested a change in the budget period. Grantee claims it was not aware that it could make such a change subsequent to the grant award (Appeal letter dated January 21, 1980). But the Grantee's argument is beside the point. In accepting the award Grantee bound itself to the documentation requirements cited above, which it has failed to meet.

#### Other Unsupported Costs

The balance of the \$19,709 disallowed—\$4,297—was "not recorded in the grant account or otherwise identified" (Audit Report, p. 46). The PHS Board noted in its decision that Grantee had not provided an explanation for the lack of documentation for this claimed amount. Grantee argues that it has never been given work papers and other documentation supporting this holding and thus has no basis for response. The difficulty with this argument is that Grantee had an affirmative responsibility to provide data to support the claimed amount, and the auditors merely pointed out that Grantee had done nothing to identify the nature or allowability of expenditures represented by the amount in question. Grantee has not shown how the auditors' work papers would be relevant, even if they could be released. Accordingly, the disallowance of this amount should stand.

#### Years 01-02-03

The auditors found that \$7,278 of \$443,450 claimed as costs on expenditure reports submitted for Years 01, 02, and 03 were unsupported in available books

and records. Expenditures supported in the cash disbursement journal totalled \$436,172. Here, too, Grantee asked for the audit work papers or other information which it claimed was necessary to identify the expense concerned. In its letter dated March 20, 1980, Grantee explained that because copies of the grant expenditure reports were not available in its files (implying they were lost during various audits), it was unable to determine what items were reported on expenditure reports but not supported in the cash disbursement journal or check book. As with the Year 04 costs above, we find that Grantee has failed to document its claim to the \$7,278 and we uphold the disallowance.

In the Order to Show Cause, the Board explained in detail how it arrived at the rate of 91 percent federal share for the Year 01 grant and 88 percent for the Year 04 grant. Neither party commented on that point and the Board's explanation will not be repeated here, although it is incorporated by reference into this decision.

#### Conclusion

For the reasons stated above, the appeal is granted in part and denied in part. The amount of the disallowance is accordingly reduced to \$29,906 (\$37,316 minus \$6,160 and \$1,250).

/s/ Clarence M. Coster

/s/ Nell Minow

/s/ Norval D. (John) Settle, Panel Chair