

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Knox County Economic Opportunity Council, Inc.
Barbourville, Kentucky
Docket No. 79-26
Decision No. 94

DATE:
APR. 28, 1980

DECISION

Knox County Economic Opportunity Council, Inc. (Grantee) appealed by letter dated February 22, 1979 from the January 22, 1979 determination of the Acting Director, Grants Administration Division, Office of Human Development Services (OHDS), Region IV, disallowing \$5,074 charged to Grantee's program year J Head Start grant for the year ended September 30, 1977. OHDS identified the disallowed costs as follows: (1) \$300 charged for unapproved equipment; (2) \$252 in overpayments to doctors for medical and dental expenses of children; and (3) \$4,522 expended in excess of the amount budgeted for construction. In its response to the appeal, OHDS indicated that it was withdrawing its disallowance of the medical and dental costs since the money had been recovered by Grantee from the doctors. An Order to Show Cause issued by the Board Chairman on December 4, 1979 called for briefing by the parties regarding the two remaining items.

Equipment Costs.

The audit report on which the disallowance was based indicated that the equipment in question consisted of additional accessories on vans acquired in the prior program period, and stated that Grantee had not obtained approval for the purchase. It appeared from the file that the cost of the accessories had been disallowed by OHDS in an earlier determination previously appealed by Grantee and docketed by the Board as No. 78-14. The Board's decision in that case found that Grantee could reasonably have understood OHDS to have approved the expenditures, and granted the appeal in full. (Knox County Economic Opportunity Council, Inc., Decision No. 68, October 29, 1979.) The Order to Show Cause therefore stated that if the \$300 was in fact a part of the costs which OHDS disallowed in Docket No. 78-14, further consideration of the matter by the Board might be unwarranted. In its response to the Order, OHDS stated that it agreed that the appeal should be granted on the issue of equipment costs.

Construction Costs.

The construction costs were disallowed on the ground that Grantee had exceeded the amount budgeted for that line item without prior approval. OHDS stated in its response to the appeal that the basis of the disallowance was 45 CFR Part 74,

Subparts L and Q, (no specific provisions cited,) as well as a provision in the OHD Grants Administration Manual requiring grantees to request prior written approval for budget revisions whenever revisions would cause the expenditure of funds for alterations and renovations.

The Order to Show Cause tentatively stated, however, that neither the OHD Grants Administration Manual nor Subpart L of 45 CFR Part 74 on budget revision procedures appeared to be binding on grantee. The version of 45 CFR Part 74 which governed at the time in question provided that Subpart L was applicable only to State and local government grantees. 45 CFR 74.1(a) (38 FR 26274 (September 19, 1973)). The OHD Grants Administration Manual is dated 1/1/77, after the grant was awarded. It was, moreover, not published in accordance with 42 U.S.C. 2928f(d), which requires that all rules, regulations, guidelines, and instructions applicable to the Head Start program be published in the Federal Register 30 days prior to their effective date.

The Order nevertheless noted that there were several requirements in Appendix F of Subpart Q of 45 CFR Part 74 (by which Grantee was clearly bound) which might be applicable in this case: Paragraph G. 21 pertaining to "maintenance and repair costs," Paragraph G.35 pertaining to "rearrangement and alteration costs," and Paragraph G.7 pertaining to "capital expenditures." Capital expenditures are defined as the costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment, and are unallowable except as provided for in the grant. Rearrangement and alteration costs are allowable, but advance written approval is required if the costs are incurred specifically for the project. Maintenance and repair costs, defined as those costs necessary for the upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but which keep it in an efficient operating condition, are allowable with no requirement for prior approval. The Order asked Grantee to provide information regarding the nature of the construction costs in order to permit a determination as to which of these provisions was applicable and asked the parties to brief the issue after this information had been submitted. The Order also requested the parties to brief the question whether the appeal should be granted on the ground that any failure by Grantee to obtain prior approval was a technicality which should be excused since OHDS had not questioned the necessity or reasonableness of the costs in question.

In response, grantee submitted a list of about 85 items, ranging from furnace filters to plywood, purchased with the funds in question. It asserted that "[t]he material used in renovating the centers did not increase the value of the centers nor represent capital improvement." The Agency in its response to the Order merely stated its opinion that the appeal should be denied on the issue of construction costs on the ground that Grantee failed to obtain prior approval required for such expenditures without indicating which of the requirements for prior approval it believed was applicable and why.

In the absence of a breakdown of the costs allocable to each item on Grantee's list or a description of the manner in which the items were used, it is difficult to make a clear determination as to whether prior approval was required for the questioned expenditures. OHDS, which presumably based its disallowance on some knowledge of the nature of the costs, did not provide any information which would assist the Board's determination. The Board has commented in a prior decision involving the same grantee on the lack of responsiveness on the part of the same office in OHDS in briefing to this Board. (Knox County Economic Opportunity Council, Inc., DGAB Docket No. 78-14, Decision No. 68, October 29, 1979, pp. 2, 4.)

Grantee's position, nevertheless, is clearly that the costs were maintenance and repair costs for which no prior approval was required. Its attempt to support that position with documentation, although inadequate, was clearly made in good faith. We note further that, although given an opportunity by the Order to do so, OHDS in its response did not assert that the costs were unnecessary or unreasonable, or that Grantee's failure, if there was one, to obtain prior approval should not be excused under the circumstances of this case. In view of the fact that OHDS has not contradicted in any but the most general terms Grantee's assertion that no prior approval was required, we conclude that the disallowance of this item was improper.

DECISION

The appeal is granted in full and the disallowance of the Office of Human Development Services is set aside.

/s/ Clarence M. Coster

/s/ Francis D. DeGeorge

/s/ Frank Dell'Acqua, Panel Chairman