

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Connecticut Department of Social Services DATE: May 29, 1981
Docket No. 78-56-CT-SS
Decision No. 183

CHAIR'S DECISION

I. Procedural Background

This decision is the final step in the reconsideration process provided in Section 201.14 of Title 45 of the Code of Federal Regulations, implementing Section 1116(d) of the Social Security Act (Act), with the Chair of the Departmental Grant Appeals Board substituted for the Administrator, Social and Rehabilitation Service (SRS) pursuant to the transfer of functions of March 6, 1978 (45 FR 9266-7).

The Connecticut Department of Social Services (State), proceeded with the Section 201.14 procedures, as modified, rather than electing review under 45 CFR Part 16, for purposes of reconsideration of a decision issued June 7, 1978, by the Acting Commissioner of Social Security, disallowing Federal financial participation (FFP) of \$146,736 claimed under the public assistance titles of the Act for the activities of district office clerical personnel.

The disallowance is based on findings in Audit Report No. 60254-01, that the State allocated unallowable food stamp administrative costs to the public assistance programs on the basis of the ratio of participating public assistance households to participating non-public assistance households. The Audit Agency concluded in its report that this allocation was contrary to Sections 4810 and 4820 of the Handbook of Public Assistance Administration (HPA), and recommended the disallowance of FFP in the amount of \$589,722. On September 22, 1976, the Regional Commissioner, SRS, disallowed the State's claim for \$589,722; the State requested a reconsideration on October 15, 1976. Thereafter, the State, on April 26, 1977, formally removed \$442,986 of the costs from the request for reconsideration. On June 7, 1978, the Acting Commissioner of Social Security affirmed the disallowance decision with respect to the remaining \$146,736.

On June 29, 1978, the State sought further review of this determination and requested a conference with the Board Chair. In submissions dated August 24, 1978 and September 14, 1978, the State and the Social Security

Administration (Agency), respectively, briefed the issue of the applicability of P.L. 95-291, which authorized reimbursement of certain expenditures by states prior to October 1975 for social services under various titles of the Act. Both parties concluded that it was not applicable to this case.

In a telephone conference on November 17, 1980, the parties agreed that the Agency would review evidence which the State would submit to support its claim for \$146,736. Agency representatives met with State officials on December 10, 1980 and on January 21, 1981 to review the additional documentation and discuss the particular duties of the district office clerical staff. These discussions did not result in an agreement between the parties.

Under the transfer of functions, the State was entitled to a conference with the Board Chair, and, after appropriate notice and the filing of pre-conference briefs, a conference was held on April 6, 1981. In a telephone conference on April 20, 1981 the parties agreed that the transcript (Tr.) of the conference contained no major prejudicial errors. The Agency and the State filed post-conference briefs on April 13, 1981 and April 24, 1981, respectively.

This decision is based on the Reconsideration Record (SRS No. MA-CT 7601), the parties' submissions to the Board, the telephone conferences, and the April 6 conference with the Chair.

II. Relevant Provisions

Handbook of Public Assistance Administration (HPA), Part V, §4810:

Federal Financial Participation

For the purpose of this section, the term "public assistance recipients" means applicants for or recipients of assistance under the federally aided State public assistance programs, including medical assistance for the aged.

- A. Federal financial participation is available for matching State and local welfare agency expenditures for the initial certification and recertification of households as eligible (1) to obtain coupon allotments under the food stamp program or (2) to receive foods under the direct distribution program of the Agriculture Marketing Service, when one or more members of the household are public assistance recipients. (emphasis added.)
- B. Federal financial participation is not available for matching State or local welfare agency expenditures for

the certification of households in which no members are public assistance recipients.

- C. Federal financial participation is not available for matching the State and local welfare agency expenditures for costs incident to the acceptance, storage, protection, issuance of, and accountability for, food coupons; nor for the costs of storage, packaging, and distribution of foods under the surplus food program.

31 USC 628 (1970):

Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and no others.

III. The Issue

It is not disputed that FFP is available for the costs of the activities of an eligibility worker incident to the initial certification and recertification of public assistance households as eligible to receive food stamps. The issue is whether any of the activities of the State's district office clerical personnel were part of the certification/recertification process within the meaning of HPA §4810.

IV. The Arguments

The Agency's position is that only the activities of the eligibility worker are part of the certification process eligible for FFP. In Connecticut, the eligibility worker interviews applicants to determine eligibility for public assistance and eligibility of public assistance households for food stamps. With respect to the food stamp process, the eligibility worker fills in two forms which provide personal and financial information about the recipient, and compute the number of coupons for which a recipient is eligible and the amount to be paid for them. The eligibility worker also has the applicant sign a food stamp identification card. See Tr., pp. 17, 23.

The Agency explains that certification for food stamps is normally part of the public assistance eligibility determination process, and that when an applicant has been found to be eligible for public assistance, such individual normally also has satisfied the criteria for food stamp certification. Agency Memorandum in Support of Disallowance, dated March 27, 1981, pp. 3,9 (hereafter Agency Memorandum). The Agency argues that to interpret HPA §4810 to include any activities performed by persons other

than the eligibility employee would violate the requirement under 31 USC 628 that funds be used only for the purpose appropriated. The Agency maintains that when the eligibility worker makes a determination of eligibility for both programs at the same time, as part of a single process, any costs incurred to certify eligibility for food stamps are so minimal and interwoven with the eligibility worker's duties as to make them incidental to certification. The Agency argues that in such cases it would cost more to make a proper allocation than to ignore the program source of those amounts. Agency Post-conference Memorandum, pp. 3-4. The Agency further argues that costs generated by workers in a food stamp unit at times other than when eligibility is decided are not part of the inseparable process, and accordingly, the justification for paying costs of determining a public assistance recipient's eligibility can not be extended to include the additional administrative costs of food stamp clericals who fill out and check food stamp forms and maintain various filing and informational systems in the food assistance programs. Agency Post-conference Memorandum, p. 5.

The State claims that FFP is clearly authorized under §4810-A for costs of the district office clerical personnel because they were engaged in certification functions. The State maintains that certification involves more than the activities of the eligibility worker. The State asserts that since §4810-C specifically sets forth the costs which are to be excluded from FFP, and that section does not place limitations on the certification and recertification process, it is reasonable to interpret §4810-A to include the necessary clerical activities incident to certification/recertification. State Post-conference Brief, p. 4.

The State rejects the Agency's claim that 31 USC 628 prohibits FFP in this case, arguing that under a proper interpretation of §4810, FFP is authorized for the costs of clerical workers involved in the certification of public assistance applicants and recipients. The State maintains that the Agency's argument is based on the faulty premise that the State is seeking FFP for costs beyond what is provided by §4810. State Post-conference brief, p. 5. The State claims that the following are some of the necessary components of certification and recertification performed by the district office clerical personnel:

The clerical workers, after receiving two completed forms [1302 and 1303] from the eligibility worker, would prepare another form called W470; prepare a file; check through Form 1303 to insure that it was properly filled out; convert the public assistance case number to a six-digit food stamp number. The clerical worker would also type in the case number and the recipient's name on the identification card (which the eligibility worker had previously had the recipient sign in blank); prepare the initial ATP card (all subsequent ATP cards were issued from the Department's central office); and mail the identification card and the initial

ATP card to the recipient; [To receive food stamps, recipients must present an ATP which states the number of coupons they can receive and the amount to be paid for them]; enter the recipient's name, along with information taken from the 1303 form, on a transmittal sheet to inform the central office of the certification and provide the necessary information for that unit to enter it in the electronic data processing system. In connection with the recertification process, the clerical workers sent out a notice near the end of a certification period to each public assistance recipient advising her to report for an interview to the eligibility worker; the clerical worker would first obtain this information from a master journal. In cases where the recipient failed to respond to the aforesaid notice, the clerical worker would prepare and send out a notice advising that discontinuance from the food stamp program would occur on a specified date. In cases where a food stamp recipient had failed to "cash" an ATP card for three successive months, the clerical worker would send out a notice of pending discontinuance.

State Post-conference Brief, p. 10, see also Tr., pp. 26-39.

V. Discussion

As discussed below, this decision holds that FFP is available for the costs of the district office clerical workers to the extent that the ministerial support functions they perform are integrally tied to the process undertaken by the eligibility worker in the certification of households as eligible to receive food stamps. As the Agency correctly asserts, FFP is not available for clerical costs involved in the operation and maintenance of the USDA food stamp program, such as providing information for central office data processing, issuing the ATP card and keeping track of whether ATP cards have been cashed, 1/

1/ The State argues that although issuing the initial ATP card can be said to be prohibited under §4810-C as a cost incident to the acceptance, storage, protection, issuance of, and accountability for, food coupons, this initial ATP card issuance is so much a part of the overall initial certification process as to be reasonably included within the purview of §4810-A. The State quotes for support from the Board's decision in California Department of Benefit Payments, Decision No. 160, March 31, 1981, that "Given the incongruities of the State's handbook provision, the Board finds that on balance, the Agency's interpretation that the handbook provision applies only situations where ATPs are prepared coincidentally with issuance of the certification is more reasonable." Id., p. 13. The State has taken this quote out of context. In California, the Board upheld "the disallowance of costs related to the issuance of ATPs based on a finding that they were not certification costs for which FFP is available." Id., p. 12. The Board stated further, "Rather than being a part of the determination of eligibility, the ATPs are issued to eligible recipients to show the face value of the coupon allotment the recipient is entitled to receive on presentation of the document and the amount to be paid for such allotment." Id., p. 12.

but the Agency did not distinguish those activities from the eligible clerical support functions which are incident to the certification/recertification process for which FFP is provided under §4810. 2/

The language of §4810-A does not place the limitations on FFP which the Agency seeks to impose, nor does the list of types of costs for which there can be no FFP at §4810-C indicate that such a strict interpretation is required of §4810-A. It is not logical, for example, to interpret certification to include the eligibility worker filling out a form but not the clerical worker checking whether that form was filled out correctly; or to include the eligibility worker's function of obtaining a recipient's signature on an I.D. card, but not the clerical function of typing the recipient's name onto the card.

The Agency's position that certification under §4810 is limited to the activities of the eligibility worker is based on the fact that such an interpretation results in minimal or insignificant costs for certification/recertification, and that any broader interpretation would violate 31 USC 628. As support, the Agency argues that since the food assistance statutes do not authorize USDA to match the costs of certifying public assistance households, this implies recognition "that certification could be accomplished without additional cost in the determination of public assistance eligibility." Agency Post-conference Memorandum, p. 4.

This analysis of the issue is not persuasive. Section 4810 provides that FFP is available for costs incident to certification and recertification. The argument that a provision authorizing FFP for costs

2/ The State argues that the Agency has not defined the terms "certification" and "recertification," that the terms were adopted from the United States Department of Agriculture (USDA) food stamp regulations governing the certification of non-public assistance households, and that, therefore, the USDA regulations should be applied to determine which activities are part of the certification process. See 7 CFR Parts 270-274, 35 FR 19737 and 36 FR 14102, and Tr. pp. 16-17. Those regulations provide useful information and guidance but to the extent that they define certification as including activities which serve the USDA program and go beyond a determination of eligibility and the necessary clerical support, there is no justification for providing FFP from public assistance programs for such costs. The State has not shown that the legislative history of the public assistance titles, or the background of §4810, supports the State's claim that this Department intended to adopt the USDA definition of certification simply because it used the same term to describe the process. While the terms may be the same, the underlying funding purposes are not identical. HHS can only fund certification costs to the extent that certification activities provide a benefit to the public assistance programs from which the funds are appropriated.

incident to an activity was written because the Agency did not anticipate that there would be any costs generated by such activity is inconsistent on its face. In addition, it does not necessarily follow that the lack of USDA funding for the costs of certifying public assistance households implies that additional costs would not be generated in that process. one may as easily speculate that USDA does not fund this activity because the activity is considered a service under the public assistance programs, the costs of which should be paid from public assistance funds. This interpretation would not be inconsistent with the Agency's position with respect to §4810. The Agency states that §4810 was authorized by the "Appropriation" sections of Titles I, IV, X, XIV of the Social Security Act and does not violate the prohibitions of 31 USC 628. If certification is an activity fundable under the public assistance titles consistent with §628, it is not reasonable to conclude that §628 is violated by interpreting certification to include necessary clerical support activities which are integrally tied to the eligibility workers' activities. This approach is consistent with decisions of the Comptroller General interpreting the applicability of 31 USC §628, albeit in other contexts, which have held that funds appropriated for a particular purpose are also available for other expenses necessary to execute that purpose. See e.g., Comptroller General Decision Nos. B-194881, December 27, 1979; B-92288, February 19, 1976; B-188710, September 23, 1977; and B-194031, May 1, 1979.

V. Conclusion

For the reasons stated above, this disallowance is upheld in the amount of FFP claimed for clerical activities not incident to the certification or recertification of households as eligible to receive food stamps, but reversed with respect to those necessary support clerical activities integrally tied to the eligibility worker's activities. This case is remanded for the Agency to determine the amount of the disallowance in a manner consistent with this decision.

/s/ Norval D. (John) Settle