

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Economic Opportunity Corporation
of Greater St. Joseph
Docket No. 77-11
Decision No. 45

DATE: August 29, 1978

DECISION

This case arises because, in the period in question, CSA directly funded administrative costs of community action agencies instead of awarding indirect costs to cover such expenses. HEW, on the other hand, follows the practice of covering such costs, where they are allowable, by an award of indirect costs determined by the application of an indirect cost rate. Since grantee is not entitled to be paid twice for the same costs, it is necessary that in determining the indirect cost rate, HEW take account of any portion of administrative costs that has already been paid by CSA.

The Economic Opportunity Corporation of Greater St. Joseph (grantee) is a Community Action Agency funded by the Office of Economic Opportunity and later by its successor the Community Services Administration (CSA) under Section 221 of the Economic Opportunity Act. It has, in addition, received grants from HEW.

Grantee's indirect cost rate proposal dated April 28, 1977, sought a 14 percent rate. This request was for a provisional rate retroactive to March 1, 1977 (Appeal letter, August 11, 1977). The Deputy Assistant Regional Director for Finance of Region VII established a 3.8 percent rate. Grantee pursued an appeal to the Acting Regional Director as provided in 45 CFR 75, and when the Acting Regional Director confirmed the 3.8 percent on July 26, 1977, grantee appealed to this Board, August 11, 1977.

Under CSA's funding practice, program account 01 was used for the funding of administrative costs, and \$44,552 was paid by CSA to grantee for the 01 account. CSA also paid additional funds under program account 05 for program purposes, and of this amount, \$13,478 was also used by grantee for administrative costs. The sum of these two amounts is \$58,030.

The 3.8 percent indirect cost rate established by the Region was obtained by subtracting the \$58,030 of CSA funds which were applied for administrative costs from grantee's total indirect costs of \$74,194 before dividing its indirect costs by the direct cost base of \$530,281. When no adjustment is made for the CSA payments, however, the 14 percent rate proposed by grantee results. If grantee were now to get a 14 percent rate from HEW and other agencies for which HEW is the lead agency, it would recover \$74,194 in indirect costs in addition to the \$58,030 paid directly by CSA for administrative costs, thus exceeding its actual administrative costs by \$58,030. Thus, the 14 percent rate is not sustainable because it allows grantee to be paid twice for a part of its administrative costs.

Grantee has asserted that in adjusting the indirect cost rate for the administrative costs paid by CSA, HEW violates Section 517(c) of the Economic Opportunity, Headstart, and Community Partnership Act of 1974, Pub. L. 93-644, which provides that "[p]olicies and procedures shall be established to insure that indirect costs attributable to the common or joint use of facilities and services by programs assisted under this part and other programs shall be fairly allocated among the various programs which utilize such facilities and services." The adjustment made by the Region, however, in fact carries out this provision by assuring that funding agencies do not pay more than the share of indirect costs allocable to their grants and contracts.

We invited the parties to address the question of whether funds supplied to grantee under CSA's 05 program account, but used for administrative cost purposes, should be treated differently from funds supplied to it under CSA's 01 account. The Region's view appeared to be that the fact that funds were originally budgeted for program purposes is irrelevant as the purpose of the adjustment is to prevent a windfall to grantee. Grantee argued that the deduction of neither the 05 account funds nor the 01 account funds was justified, but that OASC-5 (at p.49) in any event required only the deduction of the latter. We think that the Region's position has merit. OASC-5 indicates that 01 funds are to be deducted from total indirect costs because this is the only program account specifically designated by CSA for administrative costs. However, the principle against double payment which requires the deduction is also applicable to any other CSA funds actually used for administrative costs.

Grantee has also contended that the adjustment made by the Region is not required by statute or published regulation. However, we believe that neither statute nor regulation is necessary to authorize a policy which assures that no funding agency must pay more than the amount of indirect costs allocable to its grants and contracts. Grantee, in any event, apparently had notice of the policy since it is stated in the so-called "Kirschenmann memorandum" (from Henry G. Kirschenmann, Jr., Director, Division of Financial Management Standards and Procedures, of the then Office of Assistant Secretary/Comptroller, to the Assistant Regional Directors for Financial Management) in accordance with which grantee prepared its indirect cost proposal.

We believe that it is important to point out, in ruling against grantee, that its appeal may reflect not so much a disagreement with the policy of preventing double recovery as a misunderstanding of the indirect cost process. Grantee complained on the one hand that the 3.8 percent rate offered by the government is based on outdated cost figures, yet when asked if it had available more recent figures, it contended that its "argument is one of basic principle" and that "other cost figures would confuse the issue at this point." (Letter from Roebuck to Reynolds, Executive Secretary of Board, dated 4-27-78, p.4.) However, it appears that the fact that grantee used outdated figures is the source of its problem.

Grantee was seeking to establish a provisional rate effective March 1, 1977, the beginning of its program year. However, its indirect cost proposal was

based on cost figures obtained from an audit of its operations for the year ended February 29, 1976. This was the year in which grantee used the \$58,030 of CSA funds in question for administrative costs. Grantee did not have an indirect cost rate in that year and, hence, CSA was its major source of funding for administrative costs. (A few small items which might more appropriately have been treated as indirect costs, such as the cost of a bookkeeper, were apparently included as direct costs in the approved budget for its Headstart grant. See grantee's Notice of Grant Award for the budget period 3-1-77 - 3-28-78, Attachment.)

Grantee has contended that if it had had an indirect cost rate which was honored by all funding agencies, it would have been free to budget all of the money available to it under Section 221 of the EOA for program rather than administrative purposes, with the exception of CSA's share of indirect costs. (It asserts that CSA has indicated that it is willing to pay indirect costs.) (Letter from Roebuck to Mason dated 7-12-78, pp.3, 5.) Grantee's argument thus appears to be that it should not now be penalized because it was, in effect, forced to use the Section 221 funds for administrative costs. What grantee apparently does not understand is that if, in fact, the actual cost figures for the program year beginning March 1, 1977, and subsequent years show that grantee has not received direct funding for administrative costs from CSA, the provisional indirect cost rate may be adjusted accordingly, and grantee will receive the additional indirect costs to which it is entitled. In the meantime, however, since grantee has supplied only program year 1976 figures to the cost negotiators, indirect cost awards must be made on that basis. This approach may cause grantee to experience temporary shortages of funds; however, we do not believe that grantee has cause for complaint since the Region has stated that grantee may reopen negotiations "should it anticipate a significantly different level of operations for future periods." (Letter from Burnett to Reynolds dated 10-7-77, p.3.)

CONCLUSION

In determining grantee's indirect cost rate, HEW may take account of the administrative costs already paid by CSA so that grantee will not be paid twice for the same costs. The appeal is rejected.

/s/ Bernice L. Bernstein

/s/ Thomas Malone

/s/ Malcolm S. Mason, Panel Chairman