

DEPARTMENTAL GRANT APPEALS BOARD  
THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

DATE: April 1, 1974

Re: University of Miami, Docket No. 3  
Grant No. 04-H-000329-02-0 under Section 509  
of the Social Security Act - Decision No. 2

This is an appeal pursuant to 45 CFR Part 16 from the determination of the Health Services and Mental Health Administration that an unallowable expenditure has been charged to the grant. The undersigned members of the Grant Appeals Board have been designated as a panel of three for the disposition of the instant case. This decision is made on the basis of the documents submitted to the Board.

BACKGROUND

A Comprehensive Health Care Program Grant running from April 1, 1972 to March 30, 1973, was awarded to the University of Miami by the Health Services and Mental Health Administration (HSMHA), to be administered by the Regional Office Health Director. The total amount of the grant was \$725,000. Around October of 1972 the grantee determined that the grant-supported project would have to be relocated. (Exhibit #1, Grantee's Appeal Document) The grantee asserts that the HSMHA Regional Office was apprised of these events. (Exhibit I)

FACTS

The grantee states that the first cost estimates for the relocation were obtained by the grantee in December 1972. The grantee further states that the Regional Office of HEW was notified that the total estimated expenditures would be \$157,058 and that the Regional Office indicated that the estimates should be submitted by the Director of the Project in the next Project Revision. (Exhibit I)

In its appeal document (Exhibit I) the grantee makes the following additional statements:

1. During preparation of the budget revision in January 1973, the Regional Office informed the Project Director that a request for supplemental relocation funds should not be sent separately but as a part of the budget revision.

2. On February 9, 1973, the Regional Office informed the Project Director that the revised budget period should extend to 15 months and that the budget should be received by the Regional Office no later than March 15, 1973.

3. The revised budget was submitted on March 5, 1973, and the estimated expenditures were budgeted in Item Number 25 "other category" totaling \$157,058, actual renovations began on February 28, 1973. While not documented by the grantee in Exhibit I, these statements appear to be supported by the Regional Office in Exhibit #III.

4. On March 19, 1973, a site visit was performed by "Dr. Arthur Leslie, Regional Medical Director, and Mr. Fred Morrison, from the Regional Office, with regard to some concern over various budget items." "The only specific concern expressed by the site visitors with regard to the relocation costs were hopes that the ultimate costs would be lower than the budgetary estimate."

5. The grantee also states in his appeal document that "the plans for the proposed alterations and renovations, as to the cost, were approved by the Regional Federal Engineering and Construction Agency."

6. Finally in Exhibit I the grantee states that subsequent to the March 19 visit, the Regional Office, in a series of events, declined to approve the full costs of the relocation. The final decision was outlined in a letter of June 25, 1973, from the Interim Regional Health Director to the grantee.

The granting agency does not generally agree with the facts as stated by the grantee. In Exhibit III, an A.T.S. Memorandum from the Acting Regional Health Administrator to the Acting Chief, GPRB/DGC/ORM/OAM/H addressing itself to the subject of this appeal, the following important contradictions appear:

The Regional Office states that the first official notification that the Project would be moved outside the University of Miami Medical Complex was contained in Dr. Seligman's letter of March 5, 1973, which stated in part "of course our plans for relocation have by necessity been implemented." The Acting Regional Health Administrator (RHA) goes on to state "although the project had informally advised

the Regional Office that a move would be necessary, the timing and details concerning it were not known until the letter of March 5 was received and copies of the plans (were) given to us on the March 19 field visit."

The grantee implies in Exhibit I that the Regional Office was advised around Dec. 1972 that the amount of 157,058 would be necessary. The Regional Office states that there is nothing in their records to indicate that notification was given to the Regional Office prior to March 12, 1973.

The grantee's recollection of the site visit is strongly contradicted by the Acting RHD in Exhibit III as follows: "The visit was made by Dr. John T. Leslie and Mr. Frank Morrison of the Regional Office staff. The budget revision that was under discussion was for some \$300,000 more Federal funds than were available. As previously indicated copies of Grants Administration Manual Chapter 1-44 were given to Dr. Seligman. There was discussion of the \$75,000 maximum for alterations for the life of the project. The grantee was advised that \$25,083 had previously been spent on renovations which left a maximum of \$49,917 which could be approved if retroactive approval was granted. The grantee was instructed (confirmed by letter dated March 20) to submit a budget within the funds available and that alteration and renovation costs be no more than \$49,917."

The grantee's statement that the proposed plans were approved by the Regional Office Facilities Engineering and Construction Agency (ROFEC) is confirmed by the Acting Director, Division of Grants and Contracts, ORM/GAM/H in his response (Exhibit II) to the grantee's appeal. However, he goes on to state that "while it is true that the plans were approved by the ROFEC on March 20, we understand that Regional Office staff did not receive copies of the plans (dated Feb. 8, 1973) until March 19. Nevertheless, it must be pointed out that although ROFEC performs a valuable technical review of plans from an architectural and engineering standpoint, the Agency does not have the authority to commit the expenditure of Federal grant funds. Furthermore, the expenditure of grant funds in excess of \$75,000 for alterations and renovations would be in violation of the prior approval requirements contained in Part 1-44-40C., unless a waiver is obtained from the head of the granting agency or his designee."

DISCUSSION

The grantee challenges the agency determination on the following grounds:

1. that it cannot cite authority indicating that a ceiling for project renovations is carried forward to new grants.

2. the renovation plans were approved by the Regional Office Facilities Engineering and Construction Agency.

3. the Regional Office may not have authority to make final determination as to disposition of expenditures allowable under the grant award.

The grantee goes on to assert that the relevant standards are undefined, vague, and ambiguous and as such constitute a financial burden on the grantee which may jeopardize the future of the program, and that a waiver of the ceiling is not without precedent.

The appeals panel finds that sufficient authority for the Regional Office action in establishing a ceiling of \$75,000 is contained in applicable Department Policy, Chapter 1-44 of the Department's Grants Administration Manual. Section 1-44-40A.1.d of the chapter provides "the amount budgeted or used for alteration and renovation during the entire project period may not exceed the lesser of \$75,000 or 25 percent of the total funds approved for direct costs for the entire project period...." The panel also finds this language neither vague nor ambiguous and a definition of "alteration and renovation" is also contained in that chapter of the manual in Section 1-44-30, Definition.

The fact that the renovation plans were approved by the Regional Office Facilities Engineering and Construction Agency is not considered significant. That Agency's approval of architectural and engineering aspects of renovations did not and cannot constitute authorization to expend funds in excess of \$75,000 for renovations.

The panel also finds that the Regional Office has been delegated authority to make final determinations concerning alteration and renovation expenditures since the authority to approve grants under Title V of the Social Security Act has been delegated to the Regional Health Administrator. This delegation includes the authority to administer the grants thus awarded. (Exhibit II)

Finally, the fact that waiver of the \$75,000 limitation is not unprecedented is not considered significant.

DECISION

The appeal is denied and the action of the Regional Office is sustained.

/s/ David V. Dukes

/s/ Bernice Bernstein

/s/ Charles B Saunders, Jr., Panel Chairman