

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Michigan Department of Social Services
Docket Nos. 78-27-MI-HC, 78-116-MI-HC,
79-45-MI-HC, 79-46-MI-HC
Decision No. 78

DATE:
JAN. 31, 1980

DECISION

These are cases that are being considered jointly because they emanate from the same HEW agency and involve the same issue - whether the State may receive Federal financial participation (FFP) at the rate of 50% of the full value of non-expendable personal property which is purchased as part of an indirect cost pool and allocated in part to the Health Care Financing Administration (HCFA) or whether the value of the property must first be capitalized and depreciated. The principal issue in these cases is parallel to that discussed in our decisions in 78-70-MI-CS, 79-159-MI-CS (Decision No. 76), and 78-158-MI-SS (Decision No. 77).

Procedural Background

By letters dated April 19, 1978 (78-27-MI-HC), August 14, 1978 (78-116-MI-HC), February 8, 1979 (79-45-MI-HC), and February 12, 1979 (79-46-MI-HC), Samuel E. Martz, HCFA, (78-27-MI-HC, 78-116-MI-HC), and Richard W. Heim, Director, Medicaid Bureau (79-45-MI-HC, 79-46-MI-HC) notified the Michigan Department of Social Services (DSS) of disallowances of \$9,792 (78-27-MI-HC), \$5,762 (78-116-MI-HC), \$13,027 (79-45-MI-HC), and \$2,512 (79-46-MI-HC) for the cost of equipment and furnishings in excess of \$300 per unit purchased under Title XIX of the Social Security Act for the quarters ended December 31, 1977 (78-27-MI-HC), March 31, 1978 (78-116-MI-HC), June 30, 1978 (79-45-MI-HC), and September 30, 1978 (79-46-MI-HC). The DSS filed applications for review on May 16, 1978 (78-27-MI-HC), September 18, 1978 (78-116-MI-HC), and March 8, 1979 (79-45-MI-HC, 79-46-MI-HC). Since there had not been requests for reconsideration before March 6, 1978, the disallowances having been made after that date, the appeals proceeded under 45 CFR Part 16 (1978).

An Order to Show Cause was issued on September 26, 1979 in all four cases, and the responses to the Orders for 78-70-MI-CS and 78-158-MI-SS were incorporated into the files for these four cases, without objections from the parties.

Relevant Statutory and Regulatory Provisions

Title XIX of the Social Security Act (Section 1901 et seq.) (Medicaid) established a Federal-state effort to provide "medical assistance" to families with dependent children and to aged, blind, or disabled individuals whose income and resources are insufficient to meet the cost of necessary medical services. Section 1903(a) states:

From the sums appropriated therefor, the Secretary... shall pay to each State which has a plan approved under this title, for each quarter... (7) an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

The general implementing regulations for the Medicaid program can be found at 45 CFR 201 et seq. (October 1, 1977). Section 205.160 addresses the treatment of non-expendable personal property.

45 CFR 205.160(a)(1) states that items of non-expendable personal property costing less than \$5000 per unit may be subject to FFP in full at the option of the Title XIX agency in the State. This is subject to an exception in Section 205.160(a)(3) which concerns the treatment of property acquired by organizational elements treated as indirect cost centers or pools in an SRS cost allocation plan. In these situations, non-expendable personal property costing over \$300 must first be capitalized and depreciated (or be subject to a use allowance). The grantee receives FFP at a rate equal to 50% of the depreciation expense.

45 CFR 74.132 defines non-expendable personal property as:

"tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit..."

45 CFR 201.5(e) states that 45 CFR Part 74, except for Subparts G (Matching and Cost Sharing) and I (Financial Reporting), is applicable to all Title XIX grants.

Both the statutory and regulatory provisions relevant in these cases enunciate the same basic principles as those provisions relevant to our Decision Nos. 76 and 77.

Issues Raised by the Parties

The arguments raised by the State are the same as those raised in Decision Nos. 76 and 77.

In response to the State's argument that 45 CFR 205.160(a)(3) contradicts Section 1903(a) of the Social Security Act and is therefore invalid, the Agency has argued that the Board lacks "jurisdiction or authority to alter, amend or revoke any formally promulgated policies" of HCFA. A determination on this question is unnecessary under the circumstances of these appeals since we conclude that 45 CFR 205.160(a)(3) is a reasonable interpretation of the statute.

Conclusion

It is our opinion, for the reasons stated fully in Decision Nos. 76 and 77, that 45 CFR 205.160(a)(3) does not contradict the wording of Section 1903(a) of the Social Security Act and that the regulation imposes a common-sense method for payment of the appropriate federal share of costs for non-expendable personal property.

Accordingly, we deny the appeals and affirm the disallowances of \$9,792, \$5,762, \$13,027, and \$2,512. This decision constitutes the final administrative action on these matters.

/s/ Bernard E. Kelly

/s/ Thomas Malone

/s/ Malcolm S. Mason, Panel Chairman