DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Pennsylvania Department of Public Welfare
Docket No. 79-117-PA-CS
Decision No. 190

DATE: June 17, 1981

DECISION

This is an appeal of a disallowance by the Office of Child Support Enforcement (OCSE or Agency) of $7,574 in Federal financial participation (FFP), claimed by the State of Pennsylvania (State or Grantee) under Title IV-D of the Social Security Act (Act). Title IV-D provides for the enforcement of support obligations owed by absent parents to their children. The disallowed costs were for travel and private counsel for two deputy sheriffs who were sent to Florida to apprehend a defendant in an Erie County (County), Pennsylvania, non-support proceeding. For reasons stated below, we uphold the Agency's disallowance.

This decision is based on the Grantee's application for review and submissions from both parties in response to several requests by the Board for additional information. The Board's requests included a general invitation to the parties to brief any aspect of the case they deemed relevant.

Statement of Facts

In September 1975, the defendant in a County non-support proceeding was directed to enter into a bond with the County Detective as surety for the defendant's further appearance before the court. When County officials gave the defendant notice of further support proceedings, however, they were informed that the defendant had moved to Florida and would not appear at the proceedings, based on his lawyers' advice that he could not be compelled to do so.

As will be discussed later, the County District Attorney had various options available at this point, but decided to send two deputy sheriffs, acting on the County Detective's bond, to Florida to apprehend the defendant.

Florida police records, including eyewitness accounts, indicate that the two deputies arrived in Florida, located the defendant, entered his place of business without identifying themselves, apprehended the defendant without giving him notice of what he had done and without allowing him to make any telephone calls, and returned him to Pennsylvania. (See Agency March 27, 1981 submission, tab G). The State does not dispute that no notice was given to the Florida authorities concerning the proposed actions of the deputies. (See Grantee's December 22, 1980 submission, p. 7).

As a result of their actions the deputies were charged under Florida law with false imprisonment, warrants were issued for their arrest, and the Governor of Florida requested that they be extradited.

Private counsel was hired to represent the two deputies in extradition proceedings, held in Pennsylvania, to determine if the deputies should be returned to Florida. The Grantee stated that private counsel was hired since the District Attorney could not take part in the defense of any county employees because it would be inconsistent with his duties as chief prosecutor. It was determined through these proceedings that the deputies would not be returned to Florida.

By letter dated May 22, 1979, the Agency's Regional Representative notified the Grantee that it was disallowing the Grantee's claim for the cost of private counsel and for the deputies' travel costs. Originally, the Agency based its disallowance on the ground that 45 CFR 304.20(b)(3)(iv), which describes child support enforcement costs in which FFP is available, did not include expenses arising from the execution of an arrest warrant. The Agency further noted that, in addition to the regulatory ground, the claim would also be prohibited by the general principle that expenditures must be "reasonable and necessary."

The Agency, in response to the Board's request for additional information, withdrew as a ground for the disallowance the argument that 45 CFR 304.20(b)(3)(iv) did not include expenses arising from the execution of an arrest warrant, but maintained that the disallowance should stand on the alternative ground that the costs were not necessary expenditures properly attributable to the Title IV-D program under general provisions of 45 CFR 304.20(b). The Agency's argument consists of three major points: (1) it is clear from the statutory intent of the Act that the costs were unnecessary and unreasonable; (2) the Grantee had several legal and less costly alternatives to enforce the support obligations of the defendant involved; and (3) the claim is for expenditures resulting from illegal action on the part of the deputies.

The Grantee contends that the Agency's exercise of judgment concerning what was reasonable and necessary was neither timely nor within Federal management responsibility; that although there were a number of other alternatives available, the course of action chosen was the most appropriate; and that Pennsylvania's actions were not illegal.

Applicable Regulation and Statutory Intent

Section 304.20(b) of 45 CFR begins with the following general proposition:

> Services and activities for which Federal financial participation will be available shall be those made pursuant to the approved title IV-D State plan which are determined by the Secretary to be necessary expenditures properly attributable to the child support enforcement program ... . (Emphasis added).

While the standard is not as specific as it might be in indicating which costs are allowable, it does, when viewed in the context of the statutory intent behind the Federal program, provide a sufficient basis for the determination made here.

The Agency's view of Congressional intent, based on the language of Section 454(9)(C) of the Act 1/, is that the Federal program of child support enforcement is one of cooperation between the states. For costs to be properly attributable to the Federal program, they must be consistent with this intent.

Further, the necessary and properly attributable language in Section 304.20(b) is followed by an extensive list of examples of specific costs which meet that standard. While this list is not exclusive, it does provide a guide to the types of costs which are properly attributable to the IV-D program. With respect to program activities involving more than one State, the regulation provides for FFP in costs of "referral of cases to the IV-D agency of another State" or "cooperation with other States." See, e.g., §§304.20(b)(2)(iv) and (v); (b)(3)(iii); (b)(4)(iii) and (iv); (b)(5)(iv) and (v). See, also, 45 CFR §§ 302.36; 303.7; 305.32. These examples reinforce the Agency's interpretation that costs which result from failure to cooperate are not properly attributable expenditures.

1/ Sec. 454. A State plan for child support must —
(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State —

> (C) in securing compliance by an absent parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State, ...

We are not persuaded by Grantee's argument that the disallowance here amounts to second-guessing a matter within the discretion of the County District Attorney. Even if the matter were one within the District Attorney's discretion, if his choice is not consistent with the Federal program, the resulting costs can not be properly charged to the Federal program. The costs here resulted from a failure to cooperate with the State of Florida. The District Attorney rejected cooperative methods of enforcement cited by the regulation. Moreover, in selecting the option he did, he failed to take the minimal step of contacting Florida officials, even though his proposed action involved technical and esoteric points of Florida law. Given that the defendant owned and operated a jewelry store in Florida, this was not a situation where such precipitous action was required.

We conclude that the disallowed costs are not the type of costs that Congress intended to reimburse under the IV-D program and the Agency's decision to disallow is not a usurpation of the State's operating responsibilities under the program.

Grantee's Alternatives

In support of its position that the costs were unnecessary, the Agency asserts that the Grantee had several legal and less costly alternatives to enforce the support obligations of the defendant involved. The Agency cites, as examples, using the Uniform Reciprocal Enforcement of Support Act (URESA), which was in effect in both states and was designed specifically for interstate support enforcement, or requesting assistance from the Florida IV-D Agency, from Florida law enforcement officials or from Federal Agency personnel.

The Grantee maintains that it chose the best course of action. In support of its position the Grantee argues that it had an obligation to take some sort of action. According to the Grantee, criminal charges could have been brought against the defendant, but "the benefits to be derived by ... prosecution would be outweighed by the impact of such action." (Grantee's December 22, 1980 submission, p. 4). The Grantee asserts that the defendant had been a local businessman and that Grantee wanted to avoid giving the defendant a criminal record. The Grantee also claims that, even if criminal charges were brought, there was still a likelihood that extradition would not be successful.

The Grantee asserts that it did not use the URESA because, as a practical matter, the experience of the Grantee and of the non-support operation in the County indicated that the URESA was not effective. The Grantee states that the plaintiff and her counsel would not have been present at URESA proceedings in Florida, there would not have been confrontation of the two parties, and the

Florida Court would not have had the benefit of the testimony developed in the previous Pennsylvania hearing. (Grantee's December 22, 1980 submission, p. 5).

The Grantee does not specifically state a reason for not contacting the Florida authorities, but asserts that it was not legally compelled to do so because the deputy sheriffs were peace officers serving in the function of bondsmen, and therefore their actions were not illegal. (Grantee's December 22, 1980 submission, p. 7).

The Grantee's arguments are not persuasive. We believe that the deputies' activities were not "necessary" within the meaning of §304.20(b) because a variety of other options were available to accomplish the same purpose. All of the other options would have been less costly and less likely to give rise to complications.

With respect to criminal prosecution, we are not convinced that the adverse effects of criminal charges against the defendant would be as serious as Grantee asserts since the defendant no longer resided in Pennsylvania and the deputies' actions in the defendant's place of business also risked significant damage to the defendant's reputation. Moreover, the Grantee's assertion that extradition would not have been successful is based solely on speculation that the Governor of Florida would have refused an extradition request, and is unsupported by any allegation of direct knowledge of what Florida practice was in similar situations or by any consultation with Florida officials.

Grantee could also have avoided the costs here by use of the URESA or at the very least, notification of the Florida authorities. Even if the deputies, in acting upon the County Detective's bond, clearly had legal authority to apprehend the defendant, it would have been much less complicated and in keeping with the statutory intent to communicate with the Florida officials prior to taking actions. Simple communication such as a telephone call to the Florida authorities might well have prevented the travel costs and the legal fees related to the attempt to extradite the deputies to Florida.

Illegality of Actions

Because our conclusions are based on other grounds, it is not strictly necessary to reach the legality issue. Nevertheless, the questionable legality of the deputies' actions is relevant because it reinforces our decision that the costs were not necessary and properly attributable to the program.

The Grantee stated in its letter of February 25, 1981, "Records on the two deputies were transferred to the Felony Division of the State's Attorney's Office of Orange County on October 8, 1976. The records have lain dormant there since Pennsylvania refused to extradite." (p. 2). Accordingly, it appears that there has never been a final determination from the Florida authorities as to the legality of the deputies' action.

The deputies were charged under section 787.02 of the Florida Code for false imprisonment, a felony. The actions of the deputies allegedly came within the following language of the statute: "'False imprisonment' means forcibly, by threat or secretly confining, abducting, imprisoning, or restraining another without lawful authority and against his will ... ."

Since the Grantee does not dispute that the deputies abducted the defendant against his will, the primary question concerning the criminality of their actions is whether they had "lawful authority." The State cites a 1972 Florida Attorney General's Opinion, No. 072-357, as support for the legality of the deputies' actions. That opinion concludes on the basis of a Supreme Court case 2/ cited favorably by Florida courts that an out of state bondsman has complete authority to obtain physical custody of a defendant who has failed to appear in a court of a foreign state and who is presently residing in Florida.

The Agency argues, however, that Florida law requires that any delegation by a bondsman or surety of his authority to apprehend must meet specific requirements and that the jurisdiction of the delegatee peace officer may not extend beyond his "bailiwick." The Agency cites Register v. Barton, 75 So. 2d 187 (Fla. Sup. Ct. 1954); Section 903.22, Florida Statutes; and Florida Attorney General Opinion No. 51-484, issued in 1951. (Agency submission of March 27, 1981, p. 4).

At the very least, the record shows that the question of the legality of the deputies' action is a complicated one. The County District Attorney stated that he was aware that the action taken was unusual and not frequently used. (Grantee's February 25, 1981 submission, p. 2). We think that the questionable legality of the action and the rarity of its use indicated a need for further inquiry before the action was taken, and probably forbearance from taking the actions altogether.

2/ Taylor v. Taintor, 83 U.S. (16 Wall) 366 (1872).

Conclusion

Based on our analysis that the costs were not consistent with the statutory intent, there were other less costly and complicated alternatives available, and the legality of the actions was questionable, we conclude that the costs of travel and private counsel for the two deputy sheriffs were not necessary expenditures properly attributable to the Title IV-D program. Accordingly, the appeal of the Pennsylvania Department of Public Welfare is denied.

/s/ Norval D. (John) Settle

/s/ Alexander G. Teitz

/s/ Donald F. Garrett, Panel Chair