

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

DATE: August 14, 1974

Re: University of Illinois at the Medical Center - Chicago,
Abraham Lincoln School of Medicine Docket No. 7
Grant No: PHS 5R01 AM 13253-03 - Decision No. 5

This is an appeal pursuant to 45 CFR Part 16 from the action of the National Institutes of Health, PHS on July 26, 1973 in disallowing the carryover of funds from a grant to appellant for use as additional direct cost expenditure in a new grant year. The decision set out herein is based upon the documents submitted to the Departmental Grant Appeals Board. The undersigned members of the Board have been designated as a panel of three for the disposition of the instant case.

BACKGROUND

On August 21, 1973, the Abraham Lincoln School of Medicine, of the University of Illinois at the Medical Center, Chicago, through appropriate officials, requested that NIH approve its expenditure in the third year of a continuing grant of an unexpended balance from the second year of such grant. (Appendix #1). Under grant #5 RO1 AM 13253-02, there had been an unexpended balance of \$7,351.58 from the budget for the fiscal year ending May 31, 1971. After having expended the amount in question, the grantee requested that it be allowed to carry over the funds to the next fiscal year, grant #5 RO1 AM 13253-03. The request was based on the grantee's assertion that through the University's internal error the Department of Surgery which was carrying on the project was not notified of the fact that the money not expended prior to May 31, 1971 was not available as an addition to the amount awarded in the subsequent year, and that amounts exceeding this unexpended balance were in fact spent by the grantee on the project.

FACTS

On June 30, 1969, the National Institute of Arthritis and Metabolic Diseases (now Arthritis, Metabolism and Digestive Diseases) issued grant number 1 R01 AM 13253-01 to the University of Illinois, College of Medicine for a project entitled "Studies of Halogenated Hydrocarbon Anesthetics." (Appendix #2). The project period was to be from June 1, 1969 through May 31, 1972 and the grant was to cover the same period with three annual budgets (fiscal years from June 1 through the following May 31). Lloyd M. Nyhus, M.D. of the Department of Surgery of the College was the head of the project. The project continued uninterrupted through its completion date, and Dr. Nyhus has asserted in a letter dated August 21, 1973 (Appendix #1) that it has continued beyond the expiration of the grant despite the termination of federal assistance.

The funding for the project was as follows:

F/Y 6/1/69 through 5/31/70	\$49,610
F/Y 6/1/70 through 5/31/71	\$56,376
Supplemental 3/1/71 through 5/31/71	\$ 5,275
F/Y 6/1/71 through 5/31/72	\$57,000* (app. 3,4,5)

Sometime after May 31, 1971, the grantee notified NIH that of the funds allotted for the fiscal year June 1, 1970 through May 31, 1971 it had an unexpected balance of \$7,351.09. On February 2, 1972, the NIH Office of Financial Management issued a "Notice of Disposition of Grant Unexpended Balance" which was forwarded, as with all correspondence concerning the

* approximate

grant, to the Business Office of the University of Illinois at the Medical Center. Such notice stated that the unexpended balance was "transferred to the continuation grant period" for the third year of the project, and contained the following caution:

"Grantees are reminded that expenditures for the continuation grant periods are limited to the sum total of:
(1) the approved budget (direct costs)
(2) liquidation of reported prior year obligations, and
(3) applicable direct costs

"When the amount transferred together with the amount awarded for a continuation grant period, results in overfunding THE EXCESS IS NOT AVAILABLE FOR EXPENDITURES during the current budget period and will either be withdrawn by means of a revised award or used to support a future grant budget."
(Appendix #6, Emphasis in original)

In his August 21, 1973 letter, Dr. Nyhus alleges that this warning was never transmitted to the Department of Surgery.

Subsequently, the grantee expended the entire amount awarded for the fiscal year ending May 31, 1972, and overexpended the amount of \$7,351.58. In a letter dated May 15, 1973, Dr. Nyhus requested that the granting agency forgive this overexpenditure stating that "it would be an extreme hardship" for his unit to recover the money, and "it appears that PHS policy was misinterpreted when the authorization was made." (Appendix #7).

On July 26, 1973, the Grants Management Officer, External Programs, National Institute of Arthritis, Metabolism and Digestive Diseases advised Dr. Nyhus by letter (Appendix #8) that "in the absence of any justification other than the fact that the funds have already been erroneously expended, we must deny permission to use any part of the \$7,351 for direct cost expenditure in the 03 budget period " The Grant Management Officer's letter advised the grantee of its right to appeal this decision. The instant appeal resulted.

The grantee submitted a statement to the Board (Appendix #9) dated April 4, 1974, in which it advised that the area in which it overspent was animal purchases and boarding, particularly with respect to the purchase on the advice of a veterinarian of a more expensive type of monkey for its experiments. The letter relates that "the total (cost) is of course, much higher than our prediction and was not noticed because of the intensity of our experiments."

DISCUSSION

The grantee has based its appeal for authorization of the expenditure of the funds in question on the following arguments. First, that the Department of Surgery, which operated the project, was not advised by the Business Office of the PHS policy requiring that when unexpended balances from the prior fiscal year are transferred to the continuation grant period for the new fiscal year, resulting in overfunding, the excess is not available for expenditure in the new fiscal year. Second, the grantee urges that it was faced with rising direct costs for medical reasons connected with the project (substitution of more expensive monkeys) and was not aware of the overfunding due to the intensity of the experiments. Third, the grantee claims that it has expended the funds in question, and supplemented them with University funds after the expiration of Federal assistance to the project, and that requiring return of the funds in question would work a hardship on the grantee.

We find these arguments unpersuasive, and uphold the determination of NIH denying permission to use the unexpended funds from the fiscal year ending May 31, 1971 for direct cost expenditures in the fiscal year ending May 31, 1972.

Initially, we note that there is no contention that NIH did not properly notify the grantee of the policy against carry over of unexpended balances as an addition to the grant amount for the next fiscal year. It is clear that the business office was so notified, and the grantee admits that the failure of the Department of Surgery to be aware of the policy is solely the fault of the University. With regard to the allegations of the requirement of more expensive laboratory animals and increased procurement costs connected with such animals, it is our decision that the proper administration of the grant would have called for the grantee to submit to NIH a request for supplemental funding to cover these expenses. The grantee cannot increase direct costs unilaterally and then attempt to require Federal funding of such increased costs by expenditure of other monies which were not properly available for the direct costs. "Intensity of the experiments" is no excuse for failure to follow proper procedures in this regard. Finally, while the panel appreciates the additional cost to the University incurred by its decision, there, has not been a showing of sufficient hardship to require forgiving of the overexpenditure and waiver of the recovery of the monies in question.

FINDINGS OF FACT

1. Under grant #1 RO1 AM 13253-02 (Fiscal year ending May 31, 1971) the grantee had an unexpended balance of \$7,351.58.
2. NIH properly notified the grantee by a notice which indicated that the unexpended balance was transferred to the continuation grant period and warned that when the amount transferred together with the amount awarded for a continuation grant period results in overfunding, the excess is not available for expenditures during the current budget period.

3. The grantee overexpended the amount of \$7,351.58 in the fiscal year ending May 31, 1972.
4. Federal funding for the project has terminated.

DECISION

The action of NIH is affirmed, and the Appeal is denied in all respects.

/s/ Bernice L. Bernstein, Chairman

/s/ David Dukes

/s/ William Van Orman