DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Economic Opportunity Agency of Pulaski County, Inc.
Docket No. 80-155
Decision No. 242

DATE: March 17, 1982

RULING ON REQUEST FOR RECONSIDERATION OF BOARD DECISION

The Economic Opportunity Agency of Pulaski County, Inc. (Grantee) has submitted a request dated March 3, 1982, asking the Board to reconsider its Decision No. 242, issued February 5, 1982. Briefly, that decision determined that (1) in the absence of documentation that $20,054 of funds alleged to have been placed into the Grantee's Head Start unemployment escrow account actually left that account as unemployment claims, the funds were Head Start funds, and (2) that while the Grantee may have had unobligated balances in its escrow account for some or all of the budget years in question, the Grantee did not document these amounts nor did the Grantee present evidence of approval of a carryover to offset the Grantee's net overexpenditure of its 1979 Head Start grant.

Although the Board's former regulations at 45 CFR Part 16 did not explicitly provide that the Board might reconsider its determinations, the Board Chair had ruled that the Board nonetheless had inherent, discretionary authority to reconsider its decisions in exceptional circumstances, considering factors such as the nature of the alleged error or omission prompting the reconsideration request, the length of time which had passed since the original decision was issued, and any harm that might be cause by reliance on that decision. Ruling of September 11, 1980, Florida Department of Health and Rehabilitative Services, DGAB Docket Nos. 79-68-FL-HC and 80-88-FL-HC.*

As explained below, we deny this request for reconsideration.

The Grantee asserted generally that it should have been able to participate in a "hearing," and that it did not have a full opportunity to present its position without such a "hearing."

*The Board's new regulations, published after the inception of the appeal in this case, explicitly provide that the Board has discretion to reconsider a decision where a party promptly alleges a clear error of fact or law. See, 45 CFR 16.13, 46 Fed. Reg. 43820 (August 31, 1981).

We disagree. The Grantee was repeatedly given opportunities to present evidence and arguments. While the Grantee's attorney had requested an in-person hearing in a telephone conversation on September 25, 1981 with Susan Lauscher, a Board staff attorney (without specifying why one was needed), he subsequently agreed to participate in a telephone conference at the request of the Agency attorney. The Agency attorney had indicated to Ms. Lauscher in a discussion at the end of September 1981 that it would be difficult for her to participate in an October hearing or conference in Washington because of severe budget constraints imposed on her office. The Grantee was advised that the telephone conference would be preceded by a Notice from the Board setting out fully its preliminary analysis of the case, and this was done. The Grantee's attorney was also assured that there would be an opportunity for briefing after the conference as well as consideration of a renewed request for a conference or hearing. The Grantee's attorney did not renew his request during the telephone conference or at any subsequent time, nor did he indicate that he had evidence he could present to the Board only at an in-person hearing. Even the Grantee's request for reconsideration of our decision does not specifically enunicate in what way oral testimony would supplement the record, and seems only to refer to documentation. All of the issues raised in this case required documentary evidence for their resolution. The Board found that there were no material facts the resolution of which would be materially assisted by oral testimony. See, 45 CFR 16.60(c)(1)(1980).

Accordingly, we believe that the Grantee had a full opportunity to present its appeal before the Board, and was not in any way injured by the lack of an in-person presentation in this case. The Grantee had ample opportunity to submit any documentation it wished the Board to review, and indeed did submit written arguments on three occasions.

The Grantee also contended that if it had a hearing, it would present "further documentation" concerning expenditures during 1978 and 1979. As we noted above, an in-person hearing is not the only way in which documentation can be presented. The Grantee had numerous opportunities to present just such evidence. Futhermore, the Grantee contended that it placed $35,130.74 in its escrow account. Even if we assumed the validity of that amount and the 1978 and 1979 expenditure amounts (which allegedly equalled $10,358), the total amount of improperly applied escrow funds (representing the excess in the escrow account, according to the Grantee) would be almost equal to the amount actually disallowed: $35,130.74 - $10,358 = $24,782 (the amount disallowed was $25,054).

The Grantee also stated that it "would like to submit evidence demonstrating the particular projects that did deposit funds from which the excess could have been taken." (emphasis added) The Grantee has had numerous opportunities to present just such evidence during the pendency of the appeal and did not. Even if we were now to allow such evidence, the Grantee in the underlined

statement indicates that such evidence would only be speculative, not definitive proof. In addition, the Grantee has neither provided evidence or explanations (nor alleged that it could do so at a hearing) to clarify what the Board saw as contradictions in the Grantee's position as it evolved (see, Decision, pp. 3-4).

Finally, the Grantee focused on footnote 2 of the decision and stated that it should now have an opportunity to present the Board with evidence on this issue. The footnote stated that if the Grantee could document to the Agency's satisfaction that some part of the $35,130.74 was contributed during the thirteen months which ended August 31, 1979, then the Agency should consider modifying its disallowance. During the pendency of the appeal, the Grantee had presented no evidence of the composition of the escrow account. The Board, therefore, could not make an informed decision as to possible consequences of documentation of the years in which the contributions were made, and the Agency never had an opportunity to examine such documentation. As a result, the Board suggested that if the Grantee, in the future, could provide such documentation to the Agency, it should do so. This opportunity still exists.

As previously indicated, the Board may find in exceptional circumstances that reconsideration is justified; for example, where a Board decision contains a clear error of law or where there is newly discovered material evidence which would affect the decision. Reconsideration is not justified here, however, where the Grantee had a full opportunity to present its arguments and evidence during the appeal proceedings and has not demonstrated that there is any new evidence that would affect the disposition of this case. Furthermore, the Grantee has taken contradictory positions before the Board during these proceedings, and we are not persuaded by the bases stated for the current request to give the Grantee what is in essence a second opportunity to argue its case. The Grantee's request for reconsideration is, therefore, denied.

A copy of this Ruling as well as the Grantee's comments will be forwarded to the Assistant Secretary for Human Development Services so that she can consider them in accordance with 45 CFR 16.10 (1980).

/s/ Cecilia Sparks Ford

/s/ Norval D. (John) Settle

/s/ Donald F. Garrett
Presiding Board member