DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: New York City Human Resources Administration
Docket No. 83-287
ACN 02-35063
Decision No. 641

DATE: April 17, 1985

DECISION

New York City Human Resources Administration (Grantee) appealed the disallowance by the Office of Human Development Services (Agency) of $925,823 in costs claimed under Grantee's Head Start grant for the year ended January 31, 1982. In its initial brief, Grantee conceded that $34,322 of the disallowed amount was properly disallowed. After considering Grantee's appeal file and brief, the Agency reduced the disallowance to $242,353 because of documents that had not been submitted to the Agency previously. Only two disputed amounts remain - Quickstart Head Start ($57,693) and Brownsville Child Development Center ($184,660).

For the reasons discussed below, we uphold the Agency's disallowance concerning both head start centers.

Quickstart Head Start ($57,693)

Grantee administered New York City's Head Start program, and distributed program funds to 69 facilities providing services, including Quickstart Head Start.

The Agency disallowed $57,693 in renovation costs for Quickstart because the Agency found that these costs were in excess of the amount budgeted for renovations. Grantee did not contest the existence of the overexpenditure, but argued that it should be allowed to use unobligated balances from previous years to cover the overexpenditure. Grantee made separate arguments concerning balances from the year ended January 31, 1981 and balances from the years ended January 31, 1977, 1978 and 1979.

1. Funds from the year ended January 31, 1981

With respect to the year ended January 31, 1981, Grantee's position was that (1) in a letter dated November 28, 1983, it requested unobligated funds from that year be used to

cover the overexpenditure in question (which was incurred in the following year), and the Agency never responded to tnat request; (2) Grantee was not informed by the Agency that the unobligated balance had been otherwise utilized until receiving the Agency's brief in this appeal, and (3) since Grantee lacked prior notice of the Agency's treatment of the unobligated balance, Grantee should therefore be allowed to use the unobligated funds to cover the overexpenditure.

The Agency argued in response that there were no unobligated funds available from the year ended January 31, 1981 to use to cover the next year's overexpenditures. The Agency indicated that it had reprogrammed the unobligated funds from the year ended January 31, 1981 to the year ended January 31, 1983 before Grantee requested that the funds be carried over to cover the $57,963 overexpenditure. The Agency provided (1) a notarized affidavit of the Director of the Agency's Office of Fiscal Operations stating that all unobligated funds from the year ended January 31, 1981 had been reprogrammed and were not available for covering excess costs incurred during the year ended January 31, 1982 and (2) a copy of a Notice of Financial Assistance Awarded dated September 30, 1982, for the year ended January 31, 1983 that indicated that unobligated funds for the year ended January 31, 1981 had been reprogrammed to the year ended January 31, 1983.

Although the Agency's position may not have been clear until it submitted its brief in this appeal, Grantee has had ample opportunity since then to demonstrate the existence of an unobligated balance from the year ended January 31, 1981. Grantee, however, has not provided any evidence to show that there was an unobligated balance to cover the overexpenditure. Furthermore, there is persuasive evidence in the record to indicate that the funds had been reprogrammed to the year ended January 31, 1983. Therefore, we can not conclude that there are unobligated funds ~~available from~~ the year ended January 31, 1981 to cover the overexpenditure in question.

2. Funds from years ended January 31, 1977, 1978 and 1979

Grantee argued that if it is not allowed to carry over funds from the year ended January 31, 1981, its records show that there are unobligated balances from the years ended January 31, 1977, January 31, 1978, and January 31, 1979 to cover the overexpenditures. Grantee did not provide any specific information as to a final or estimated figure for these unobligated balances. During a telephone conference, the Agency stated that the request to carry over unobligated

funds from these years had to be refused at this time. The Agency stated that although an audit conducted during 1984 had tentatively identified unobligated balances for those years, the report had not been released in its final form. Until that occurs, the Agency could not conclude that any funds were available.

Grantee has provided no evidence of the existence of positive fund balances, and the Agency has stated that a determination of availability of funds is premature. We, therefore, have no basis to determine that there were carryover funds available from the years 1977-1979.

For the reasons discussed above, we uphold the disallowance of $57,693 in renovation costs. This decision does not preclude the Agency from exercising any discretion it may have to allow Grantee to reprogram 1977-79 unobligated balances in the future if it is determined that such balances exist. */

Brownsville Child Development Center ($184,660)

1. Allowability of Costs

Although the disallowance letter did not mention the amount that was disallowed for the Brownsville facility, the parties agreed in their briefs that $184,660 in costs were disallowed. The Agency found that the costs exceeded budget lines or were considered to be unreasonable, undocumented, or unauthorized. Grantee has admitted that the costs characterized by the Agency as being in excess of budget line, unreasonable, or undocumented were in fact as described by the Agency. Although Grantee has maintained that the costs that the Agency found to be unauthorized were ~~allowable~~, it has not provided documentation of its claim. Moreover, rather than argue the merits of the disallowance, Grantee maintained that it could not provide a defense because of three legal proceedings that were

*/ Even if Grantee had demonstrated that there were unobligated balances available to cover the overexpenditures, the question of whether the Grantee can use any prior unobligated balances to cover the overexpenditures is purely discretionary on the part of the Agency. With regard to direct, discretionary project programs (under which heading the Head Start program falls), the Board does not have jurisdiction to review Agency determinations as to the disposition of unobligated balances (see 45 CFR Part 16, Appendix A, C.(a)(1)).

being conducted with regard to Brownsville's operation (see discussion below). The Agency's position was that it was Grantee's responsibility to document that the expenditures were authorized and allowable, and that Grantee had not fulfilled its responsibility.

Grantee has an initial burden to document these costs and show that the claim for reimbursement is proper. In order to claim costs under a grant program, the grantee must show that the costs are necessary and reasonable for the administration of the grant program, are allocable to the program, and are incurred for the benefit of the program. Grantees are required to make and retain records of expenditures, and support these records with source documentation. The Board has found that "[t]hese provisions clearly place the burden of establishing allowability of costs on the grantee." (Neighborhood Services Department, Decision No. 110, July 15, 1980) The Board has found the requirement to document costs to be a fundamental principle of grant management. (Head Start of New Hanover County, Inc. Decision No. 65, September 26, 1979)

The Grantee here clearly has failed to meet its burden of documentation with respect to costs which were disallowed as unreasonable, undocumented or unauthorized. Accordingly, we conclude that the disallowance of these costs must be upheld.

During the proceeding, the Board raised an additional question concerning costs disallowed because they were "in excess of budget line." The Board asked the Agency whether, in light of budget flexibility afforded grantees, unexpended funds from other segments of Grantee's operation might be used to cover the budget line overexpenditures at Brownsville. The Agency responded that Grantee should not be allowed to rebudget funds under these circumstances because Grantee had failed to document the allowability of the costs comprising the overexpenditures. Since the allowability of these expenditures could not be established, no unused funds could be rebudgeted to cover them.

We agree with the Agency that since Grantee has not documented the allowability of the budget line overexpenditures at Brownsville, there is no basis for Grantee to use any unexpended funds to cover these overexpenditures.

On the basis of the foregoing, therefore, we conclude that the Agency acted appropriately when it disallowed the costs for Brownsville.

2. Grantee's Request that our Decision be Delayed

Grantee maintained that it could not provide a defense for the allowability of these costs because of a proceeding in bankruptcy court relating to Brownsville and two investigations into Brownsville's operations being conducted by New York City. Therefore, Grantee requested the Board delay rendering a decision in this appeal.

Grantee, however, provided no legal authority which would justify delaying a decision under these circumstances. Further, Grantee failed to demonstrate that a decision in this case would in fact adversely affect the other proceedings or that the other proceedings made it impossible to defend its position here.

Grantee stated that it had a claim against Brownsville in bankruptcy court and was concerned that any position it took in this appeal would adversely affect the other proceedings. Grantee, however, failed to provide any legal or factual basis in support of its alleged concern, and we are unaware of any reason why a decision here would compromise Grantee's claim against Brownsville in bankruptcy court.

Grantee also stated that the New York City District Attorney's office may be conducting a criminal investigation into Brownsville's operation. While Grantee has stated that the District Attorney's office may be conducting an investigation, it never stated that an investigation was actually in progress or why such a proceeding would call for a delay in the Board's decision-making process. In any event, the District Attorney's investigation would seem to involve only the possibility of bringing criminal charges and would not affect the Grantee's obligation to the Agency.

Finally, Grantee argued that the New York City Department of Investigations, as part of its investigation of Brownsville, had taken Brownsville's records into its possession and Grantee has not been able to examine Brownsville's records to refute the Agency's disallowance. Although Grantee has argued that it could not obtain records, it has not provided any evidence that it had attempted to obtain the records (or copies of the records) and was refused permission, nor has it explained whether it had retained copies, and, if not, why.

Therefore, the Grantee has not provided the Board with any reason to delay its decision based on the pendency of these proceedings.

CONCLUSION

For the reasons discussed above we uphold the disallowance in this appeal.

Norval D. (John) Settle

Alexander G. Teitz

Donald F. Garrett
Presiding Board Member