

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Kentucky Department for Human Resources
Board Docket Nos. 78-137-KY-HC
79-22-KY-HC
Decision No. 121

DATE: September 30, 1980

DECISION

The Commonwealth of Kentucky, Department for Human Resources (Grantee or State) appealed under 45 CFR Part 16 the disallowances of Federal financial participation (FFP), for the calendar quarters ending on December 31, 1977 and March 31, 1978, made by officials of the Health Care Financing Administration (HCFA or Agency). The disallowances were based on determinations that the State had submitted claims for FFP for certain expenditures at higher rates than allowed by the regulations. Inasmuch as identical issues were involved and the parties did not object, the two cases were considered together.

This decision is based on the State's November 2, 1978 and February 9, 1979 applications for review, the Agency's January 25, 1979 and June 8, 1979 responses, and the Agency's September 8, 1980 response to the Board's July 1, 1980 Order to Develop the Record. The Order noted that the Board might reach a decision based on the parties' responses. The State did not file a response to the Order.

Background

Various percentages of FFP are established by law and regulation for operation and administration of specific aspects of the Medicaid program under Title XIX of the Social Security Act.

The amounts disallowed by HCFA represent reductions in FFP from the 100% and 75% rates claimed by the State to the 50% rate HCFA has found to be allowable. The Agency's review of expenditure reports submitted by the State for the quarters ending December 31, 1977 and March 31, 1978 resulted in separate disallowances of \$22,332 and \$42,165, respectively. In both cases the disallowance letters call for a reduction in the State's claim for FFP from a rate of 100% to 50% for expenditures other than the compensation and training costs of personnel of the State licensing agency who are responsible for inspection of long term care facilities. Also, in both cases the disallowance letters call for a

reduction in the State's claim for FFP from a rate of 75% to 50% for costs other than salary, other compensation, travel, and training of skilled professional medical personnel and direct supporting staff of the State agency administering the Medicaid program.

The relevant provision, quoted from 42 CFR 446.175, reads as follows:

42 CFR 446.175 Staffing and training costs

- (a) "Availability of FFP." FFP is available in expenditures for salary or other compensation, fringe benefits, travel, per diem, and training, at rates determined on the basis of the individual's position, as specified in paragraph (b) of this section.
- (b) "Rates of FFP." (1) For skilled professional medical personnel and supporting staff of the State agency or of other public agencies (as defined in § 446.151), the rate is 75 percent.
- (2)....
- (3)....
- (4) For personnel of the State licensing agency who are responsible for inspections of skilled nursing or intermediate care facilities, the rate is 100 percent through September 30, 1980:
 - (i) If a work plan and budget plan relative to this personnel have been approved by the Department's regional office, and
 - (ii) Only for those expenditures that are not attributable to the overall cost of meeting the State licensing agency's responsibilities under State law and regulations, but are necessary and proper for carrying out the inspections required under Title XIX and the pertinent regulations of this chapter.

The requirements for increased levels of FFP contained in 42 CFR 446.175 are the same as those of 42 CFR 450.120(a) and (d). The latter was in effect during the quarter involved in 78-137-KY-HC and part of the quarter involved in 79-22-KY-HC; the former was in effect during the remainder of the quarter involved in 79-22-KY-HC. Currently, the provisions of 42 CFR 446.175, with minor revisions not relevant here, can be found at 42 CFR 432.50.

The State argues that 100% and 75% FFP is available under the regulations for the claims disallowed. HCFA contends that 100% and 75% FFP is not available under the regulations for the costs claimed but 50% FFP is available. The State presents no documentation of its position. HCFA does present documentation of its position.

Items Disallowed

The notifications of disallowance did not identify the items for which the higher rates of FFP were disallowed. HCFA's responses to the State's appeals and HCFA's response to the Board's Order to Develop the Record stated that the items in question were expenditures for supplies, communications, premises, contractual services, rental and maintenance equipment, capitalized equipment and non-capitalized equipment. The Agency filed supporting documentation, including copies of the State's cost allocations workpapers and regional office workpapers. Under the applicable regulation cited above, claims for expenditures for supplies, communications, premises, contractual services, rental and maintenance equipment, capitilized equipment and non-capitalized equipment are not allowable for FFP at the 75% or 100% rates.

In its response to the Board's Order, HCFA states:

It is important to note that the Respondent has not characterized the costs involved in any manner contrary to what the Applicant itself has done. The Respondent further believes that its position is a very straightforward one--it has set forth what the law and the regulations provided and it has based its disallowance amounts upon information gleaned from the Applicant itself, without different categorization or manipulation of those figures. (page 3)

HCFA's submissions support this contention. Moreover, HCFA has offered to present additional documentation and witnesses if necessary. The State has presented no evidence beyond its conclusory statements. The documentation presented persuades the Board that the disallowances can be supported and should be sustained.

Sufficiency of Notice to State

On April 10, 1979, the designated attorney for the Kentucky Department of Human Resources stated in a telephone conversation with a member of the Board's staff, that the State had found that HCFA's notifications of disallowance did not provide sufficient information regarding the

expenditures for which FFP was being disallowed to permit the State to prepare an adequate appeal. The designated attorney for Kentucky further stated that State auditors were using HCFA's response to the State's appeal as a source of information about the disallowances so as to prepare a more complete statement of Kentucky's case.

The Board agrees that HCFA's notifications of disallowance in this matter may not have sufficiently informed the State of the specific items for which FFP was being disallowed. The Agency's response to the State's appeal, however, provided specific information regarding the items disallowed, thus curing any possible defect in the disallowance letters. The Board's Order to Develop the Record set forth a summary of the record as presented by the parties and was in part an opportunity for the State to use the information contained in the Agency's response to present a more complete appeal.

The Board, having received no response to its Order to Develop from the State, inquired by telephone whether a response would be filed. Kentucky's designated attorney stated that Kentucky would not file a response because of changeover in staff who were familiar with the disallowance. Kentucky had been informed in the Order that the Board might reach a decision based on responses to the Order. Nonetheless, the State still presented no evidence in support of its position.

Conclusion

The documentation presented supports HCFA's position. The State has presented no documentation in rebuttal. Accordingly, the Board upholds HCFA's disallowance of \$22,332 in FFP for the quarter ending December 31, 1977 and \$42,165 in FFP for the quarter ending March 31, 1978.

/s/ Donald G. Przybylinski

/s/ Clarence M. Coster

/s/ Norval D. (John) Settle, Panel Chair