

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: New York State Department of Social Services
Docket No. 79-94-NY-HC
Decision No. 204

DATE: August 7, 1981

DECISION

The New York State Department of Social Services (State) appealed a disallowance by the Director, Medicaid Bureau, Health Care Financing Administration (HCFA, Agency), of \$596,200 in Federal financial participation (FFP) claimed under Title XIX of the Social Security Act (Medicaid) for the period April 1, 1975 to December 31, 1976 for reimbursement at 75 percent for the cost of skilled professional medical personnel and supporting staff. The Agency contends that FFP was only available at the 50 percent rate, so that the State's claim was overstated by the disallowed amount. Such costs are eligible for 75 percent FFP if attributable to administration of the Medicaid program where skilled professional medical expertise is necessary. The issue is whether the disallowance should be upheld because the State cannot document its claim for 75 percent FFP.

The record on which this decision is based includes the State's application for review, the Agency's response, an Order to Show Cause issued by the Board, the Grantee's response to the Order, and documentation provided by the Agency in accordance with a request made in Grantee's response to the Order. The Agency was not required to respond to the Order and did not do so.

We conclude that the Agency's determination should be upheld for reasons set forth below.

Applicable Statute, Regulations, and Policies

Section 1903 of the Social Security Act (1976), 42 U.S.C. § 1396b, provides in pertinent part:

(a) From the sums appropriated therefor, the Secretary (except as otherwise provided in this section) shall pay to each State which has a plan approved under this title . . .

. . . .

(2) an amount equal to 75 per centum of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to compensation or training of skilled

professional medical personnel, and staff directly supporting such personnel of the State agency or any other public agency; plus

. . . .

(6) an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

45 C.F.R. § 250.120 ^{1/} implements Section 1903 and provides, in part, that FFP is available at 75 percent for salary and other compensation, travel, and training costs of skilled professional medical personnel and support staff involved in the State and local administration of the medical assistance program. Skilled professional medical personnel include physicians, dentists, and other health practitioners. The 75 percent rate is available only for the amount of time such persons actually devote to the administration of the program. Otherwise, FFP is available only at the 50 percent rate.

The Medical Assistance Manual (Action Transmittal, SRS-AT-75-50, July 3, 1975) ^{2/} provides in section 2-41-20 B. 1. a. that:

The function of a "skilled professional medical" position whether at the State or local level, is the principal basis for determining eligibility for increased Federal matching. . . .

Support positions derive their eligibility for increased Federal matching from their direct association with and supervision by skilled professional medical personnel. . .

The Medical Assistance Manual explains in section 2-41-20 B. 2. a. that it is important to look behind the job title and organizational placements of a position and instead look at the functions included in the job. In order to claim matching at the 75 percent rate, the skilled professional medical personnel must be performing functions at a professional level of

^{1/} This section of the Code of Federal Regulations has been recodified at 42 C.F.R. §432.50 (1978). However, during the period covered by this disallowance the above cited regulation was in effect, and all references in this decision are to the earlier regulation.

^{2/} Although this Action Transmittal was published during the period for which this disallowance was taken, both parties cited its provisions to support their arguments. Accordingly, the Board will also refer to the Action Transmittal in its discussion.

responsibility requiring medical subject area expertise. The Manual points out that staff functions unrelated to the specialized field of medical care management are eligible for 50 percent matching and, as an example, states that a physician in charge of an accounting operation would be eligible only at 50 percent FFP.

Section 2-41-20 B. 2. b. describes the kind of documentation to substantiate a claim. That section provides in part:

Because the position's function is the primary determinant of its professional medical status, the State's official position descriptions will provide the basic substantiation for claims for 75 percent matching. . . .

Section 2-41-20 C. 5. provides as follows:

Audit Staff - 50 or 75 percent FFP

Personnel engaged in routine claims review, such as auditing whether the codes correctly coincide with billed charges, are matched at 50 percent. Matching at 75 percent would apply to those skilled professional medical personnel (and directly supporting staff) whose function involved the necessity for and adequacy of the medical care and services provided, as in utilization review.

Discussion

Background

The Agency performed an audit for the period October 1971 through March 31, 1975 to determine the accuracy and propriety of expenditures claimed by the New York City Department of Social Services (NYCDSS) for FFP. This audit report, Audit Control No. 02-60251, dated March 24, 1976, found that personnel costs for three departments, identified in the follow-up audit as Central Office Clerks (JYA), Central Office Dentists (KYA), and Medical Services Payment (DYA), were incorrectly classified as policy planning/administration and consequently claimed at 75 percent FFP rather than 50 percent FFP. The auditors determined that the major functions in these departments were "the receipt and review of dental invoices and supporting documentation, the authorizing of certain types of work to be performed and the processing of payments" and that dentists employed in these departments were not involved in policy making or administration but rather with auditing dental invoices prior to payment. The auditors found that one of the factors contributing to this improper classification was the fact that NYCDSS did not have a system to determine properly the type of work performed by its various departments. The auditors found the NYCDSS was

unable to correlate accurately the functions performed by the dental payment units with the specified claiming requirements set by the State, and noted that NYCDSS prepared its administrative cost claims based on department names which were, in most instances, insufficient to determine functions. (Audit Report, pp. 6 & 7.)

In question here is the follow-up audit for April 1, 1975 to December 31, 1976. This audit report, Audit Control No. 02-80201, dated December 12, 1977, affirmed the conclusions in the first audit and determined that NYCDSS's claim for FFP for these three departments was overstated by \$596,200. In disputing the conclusions reached in the follow-up audit, the State asserted that "the group auditing dental invoices meet the 75% FFP eligibility requirement" and noted that New York City had agreed to prepare job descriptions for those positions which the State hoped would help to resolve this question. (Letter of June 16, 1977, Part of Exhibit 1 to the Agency's Memorandum In Support of Respondent's Position.)

Before the disallowance in question here was made, the Agency reviewed documents submitted by New York City to support the 75 percent FFP claim. The results of this review are summarized in a memorandum dated April 26, 1978. (Agency memorandum) (Exhibit 3 to the Agency's Memorandum In Support of Respondent's Position.) The Agency concluded that its review "seems to confirm the statement made in the original audit that NYCDSS did not have an adequate system to properly determine the type of work performed by the department's various units." (Agency memorandum, p. 3.) The Agency noted that it received job descriptions for 7 dentists out of the approximately 50 dentists listed on a 1972 roster and stated both that the duties listed on individual job descriptions were so diverse as to apply to several units, and that the documents themselves were prepared as part of a self-evaluation program. The Agency memorandum states that some of the documents it reviewed were unsigned, undated, altered, and not identified with any organization. The Agency questioned the authenticity of what had been submitted, concluding that the "material submitted is inconclusive and not valid appropriate documentation." (Agency memorandum, p. 4.) The Agency also noted that it had received no job descriptions for support personnel.

Parties' Positions

The State's argument is that the Agency disallowed expenditures for salaries for dentists and supporting staff who performed administrative services requiring the exercise of professional medical expertise. The Agency contends that the State has not provided sufficient documentation of the functions of the personnel in question to substantiate the claims for FFP at the 75 percent rate. The Board finds that the question involved here is not whether certain functions qualify for the 75 percent rate but whether the State can show that personnel costs for the three NYCDSS departments are attributable to individuals performing functions for which the 75 percent rate can be claimed.

State's Obligation To Document Claimed Costs

In order to demonstrate that the personnel were performing functions for which the 75 percent rate can be claimed, the State has an initial burden to document these costs and show that the claim for reimbursement is proper. The cost principles at 45 CFR Part 74, Appendix C, Part I, Section C provide that 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 meet standards for financial management of the grant. These standards, 45 CFR §74.61(b), (f), (g), require that the grantee 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, p. 3.) Furthermore, in administering the Medicaid program, a state, and where applicable, local agencies, are required by 45 CFR §205.145 to maintain an accounting system and supporting fiscal records to assure that claims for federal funds are in accordance with applicable federal requirements. Accordingly, if an audit report makes findings that certain costs or claims for expenditures are not proper, the standards discussed above impose an obligation on the grantee to show in response to the audit report that its claim is proper. The Board also 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.) In the instant case, in coming before the Board, the State does not lose this initial obligation of documenting costs even though its claim for FFP in these costs was paid by the Agency. The State must provide documentation sufficient to show that its claim for 75 percent FFP for costs for skilled professional medical personnel and support personnel was proper, thus necessarily showing that the audit report findings were wrong.

Relevant Documents

The documents in the record which pertain to the personnel costs in question are a letter dated June 24, 1977 from an official of the Office of Budget and Fiscal Affairs for the City of New York, Human Resources Administration to an employee of the New York State Department of Social Services (June letter) and job descriptions for 32 dentists. 3/

3/ In its response to the Order to Show Cause the State admitted that it was unable to submit additional documents for the Board's consideration. (State Response to Order to Show Cause, p. 8.)

The June letter was attached to the State's response to the Order to Show Cause. We have no information to indicate that the Agency had ever previously received a copy of this letter or that it was used by the parties in their discussions concerning the auditors' findings.

The June letter briefly details "the duties performed by the per diem dentists on distribution point KYA 2, which the HEW audit considered to be wholly 50% FFP and we [New York City] consider to be wholly 75% FFP." The letter states that these dentists were employed in four sections of the Bureau of Medical Services: Prior Authorizations, Quality Assurance Review ("formerly called Payments"), Evaluation, and Nursing Homes. The letter lists the dentists employed in each section as well as identifying the names and special duties of three dentists not in these four sections. The June letter refers to a State audit report, "'Audit of the Bureau of Medical Assistance-skilled Professional Personnel Claimed for 75% Federal Reimbursement, New York City Department of Social Services' dated October 17, 1975." According to the June letter, the State concluded in its Audit that personnel costs for the Quality Assurance Review and Nursing Homes sections were appropriately reimbursed at 50 percent and personnel costs for the Prior Authorizations and Evaluation Sections were appropriately reimbursed at 75 percent. The work of the dentists in the Prior Authorizations section is described as:

[P]rocessing requests by dentists when the services to be performed require prior authorization. . . .
. . . [D]entists in this section make field trips to DSS Health clinics . . . to verify the need for [dental] work.

The letter states that dentists in the Evaluation section "evaluate the quality of the dental work received by recipients." The June letter does not reference the time period in question here or append any organization charts or materials for these KYA sections which were in effect in the City during this time.

As requested by the State in its response to the Order to Show Cause, the Agency produced the documents currently in its files that pertain to the State's claim. The Board received documents entitled "Job Description" for 32 dentists. The documents contain no form number or other information identifying them as official State or New York City records. They are undated and unsigned. The documents show the organizational unit where the individual dentist works and give the supervisor's name. The daily work load is given by listing the percent of time spent for various duties, such as 65 percent for "Clinical Review of patients for Prior Approval," the first and most significant duty listed for those dentists in the organization identified in the job descriptions as "Prior Approval reviews." (Presumably the same section identified as Prior Authorizations in the June letter). The job descriptions appear to be

a standard form giving the same duties for each section with the individual dentists' names merely inserted in the first line. The Board has job descriptions for 29 of the 31 dentists listed in the June 24, 1977 letter as well as for three individuals not listed in the June letter. Examination of the job descriptions shows that they are consistent with but do not add to the information about the KYA sections supplied in the June letter.

Documents' Failure To Support State's Claim

The State asks that the disallowance be reversed in total. ^{4/} However, the State's arguments are based on only some of the duties described in the June letter, prior approval for dental work and the "processing of payment" characterized by the State as "a rendum [sic] sample review of the quality of care provided." (State Response to Order to Show Cause, pp. 4 & 5.) The State has provided no documents or discussion of the personnel employed in two of the three departments, JYA and DYA, for which total personnel costs were claimed at 75 percent FFP. In addition, the record contains no information concerning support personnel in the three departments. There is then no information whatsoever before the Board to support a finding that the State was entitled to 75 percent reimbursement for DYA and JYA. In addition, the State's own audit report finding 50 percent reimbursement appropriate for the Quality Assurance Review and Nursing Homes sections of KYA, as cited in the June letter, is unrefuted by other evidence. There is no support then for a conclusion that 75 percent reimbursement is available for personnel in these two sections. From the June letter we conclude that the State and the City agree that costs for personnel employed in the Prior Authorizations and Evaluation sections should be reimbursed at 75 percent. Nevertheless, as explained below, we cannot conclude from the record before us that the State has shown that any personnel identified in the June letter were in fact performing duties subject to 75 percent FFP.

The Action Transmittal specifically cites to official position descriptions as "basic substantiation" for 75 percent FFP. The Agency memorandum discusses several position descriptions which were prepared as part of a self-evaluation, some of which listed duties so diverse the Agency could not determine where the individual dentist was employed. There are 32 job descriptions in the record here, all of which list identical duties for each section and are consistent with the descriptions of these sections in the June letter. Accordingly, it does not appear likely that the seven job descriptions referenced by the Agency memorandum were part of the 32 job descriptions in the record here. The 32 job descriptions before

^{4/} The State also asks in the alternative that HCFA identify the functions reimbursable at 75 percent and reverse the disallowance to that extent. (State Response to Order to Show Cause, p. 9.)

the Board are unsigned and undated. In addition, since we have concluded that these documents were probably not the subject of the Agency memorandum, there is then no information about why they were prepared, who prepared them, what time period they apply to, or why the documents, which were in the Agency's files, were provided to the Agency. The record here fails to show that the 32 job descriptions are in fact "official." The June letter, from the City to the State, was written after the Agency's findings in the follow-up audit were given to the State. Although it describes the functions of four KYA sections, there is no information concerning the time period for which this letter is an accurate description. The descriptions in the letter are conclusory and argue on the City's behalf rather than provide direct evidence that certain functions were performed which would support a claim for 75 percent FFP.

The auditors consistently faulted the City for its lack of an adequate system to determine the work performed by its various departments. The Agency memorandum repeated that finding and faulted the job descriptions it reviewed because "the duties were so diversified that they could have been working in several units and it would have been difficult if not impossible to prorate their time." (Agency memorandum, p. 3.) The rather disorganized state of the City's departments, as reflected by the audit reports in general and the above referenced findings in particular, is inconsistent with the clear exposition of functions made in the June letter and the job descriptions in the record here, where there are no overlapping functions between dentists and sections and each dentist in a section performs the same duties. This apparent inconsistency diminishes the weight we can give to the City's description of the KYA sections, prepared in 1977, and the undated, unsigned, and, apparently, unofficial job descriptions. The documents in the record are unsupported by any other documents, affidavits, city organization charts or materials, or information of any kind from the time period in question which would support a finding that the functions ascribed to the sections and individuals discussed in the June letter were in fact performed and in fact their duties. Accordingly, the Board concludes that the record is insufficient to support a finding that personnel costs attributable to dentists and support personnel employed in the Prior Authorizations section, the Evaluation section, or elsewhere in KYA should be reimbursed at 75 percent.

Although the auditors recognized that "some of these functions [of the three departments] may qualify for 75 percent FFP," (Follow-up Audit Report, p. 7) there is no persuasive evidence before the Board to support specific conclusions concerning the functions eligible for 75 percent FFP that were performed by dentists and direct support personnel in the three NYCDSS departments in question here. The State's arguments and supporting documentation are conclusory and provide no convincing information about the functions of these three departments from April 1, 1975 to December 31, 1976.

Additional Concerns

There is no dispute that Section 2-41-20 C. 5. of the Action Transmittal provides for 75 percent reimbursement for "Audit Staff" for "skilled professional medical personnel and directly supporting staff whose function involves assessing the necessity for and adequacy of the medical care and services provided as in utilization review." The State argues that this standard supports its claim for 75 percent reimbursement. However, it is also clear from the Action Transmittal that the "function of a ... position ... is the principal basis for determining eligibility" for 75 percent FFP. (Section 2-41-20 B. 1. a.) Since the State has failed to show the functions performed by the dentists and their direct support staff employed in the three NYCDSS departments in question, the arguments based on the reimbursement standard for "Audit Staff" are simply not persuasive.

The disallowance is not based on the unavailability of 75 percent reimbursement for specific functions but rather on the State's failure to document that there were in fact individuals performing functions eligible for 75 percent reimbursement in the three NYCDSS departments. Consequently we see no need to require HCFA to relate the disallowance to particular functions as the State requests.

In concluding that the State has not sufficiently documented its claim for reimbursement at 75 percent, we rely neither on the State's failure to formally contest the findings of the first audit concerning similar costs for an earlier time period nor on the description of how such costs are to be claimed set forth in State Bulletin 143b.

Conclusion

For the reasons stated above, we uphold the disallowance of \$596,200.

/s/ Norval D. (John) Settle

/s/ Alexander G. Teitz

/s/ Cecilia Sparks Ford, Panel Chair