

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Franklin C. Fetter Family Health Center
Charleston, South Carolina
Docket No. 80-40
Decision No. 99

DATE: MAY 19, 1980

DECISION

By letter dated February 26, 1980, the Franklin C. Fetter Health Care Center (Grantee) appealed a decision of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Grants Appeals Committee upholding a disallowance by a Grants Management Specialist, Grants Management Branch, National Institute on Drug Abuse (NIDA), ADAMHA, Public Health Service (PHS). The ADAMHA Committee decision is dated February 13, 1980.

The Agency disallowed \$18,202 in expenditures claimed as indirect costs under a NIDA research grant. The Grantee appealed this disallowance, although it referred to the amount disallowed as \$22,021. The Grantee did not explain the discrepancy between the two amounts, and it is not relevant to this decision.

The Board Chairman issued an Order on March 24, 1980, directing the Grantee to show cause why the appeal should not be denied. The Order cited a provision from the current (1976) PHS Grants Policy Statement that in order to be reimbursed for indirect costs, a grantee institution must first establish an appropriate indirect cost rate. This reiterates the requirement in the August 1974 "Guide for Non-Profit Institutions" (OASC-5), incorporated by reference into the 1974 PHS Grants Policy Statement. The Order noted Grantee's admission that it "should and could have negotiated the said rate" and failed to do so. The Order directed the Grantee to identify in what respects, if any, the statement of the case there was materially incomplete or inaccurate. The Grantee did not respond.

The Agency disallowed the indirect costs because of the absence of a negotiated indirect cost rate for the May 1976 - June 1977 period of the claim. The provisional indirect cost rate of 26.3 per cent negotiated by the Grantee in September 1979 is limited by its terms to the period from September 1, 1979 until amended. The Grantee does not dispute that indirect costs claimed for the period May 1976 - June 1977 must be covered by a cost rate agreement for that period and admits that there is no such agreement here. The Grantee points to the hardship of having to absorb such expenditures and the "savings" to the Agency as a result of Grantee claiming 10 per cent rather than the 26.3 per cent rate contained in the September 1979 agreement, but the Board

has held that such equitable arguments may not be a basis for the Board to disregard a legal requirement. See American Foundation for Negro Affairs, DGAB Docket No. 79-4, Decision No. 73, December 28, 1979; Chinle, Arizona, School District No. 24, Docket No. 77-15, Decision No. 60, June 29, 1979. Accordingly, in the absence of a negotiated cost rate agreement for the period May 1976 - June 1977, there is no basis to find for the Grantee.

Conclusion

For the reasons stated above, the appeal is denied.

/s/ Donald G. Przybylinski

/s/ Robert R. Woodruff

/s/ Frank L. Dell'Acqua, Panel Chairman