

DEPARTMENTAL GRANT APPEALS BOARD

The Department of Health, Education, and Welfare

SUBJECT: Lane County Community
Mental Health Center
Docket No. 26
Grant No. 16-H00011
Decision No. 33

DATE: March 3, 1977

DECISION

Statement of Issues

This is a review of expenditure disallowances under the Community Mental Health Centers (CMHC) Staffing Grants Program, as a result of an audit for the period from February 1, 1969 through January 31, 1973.

The disallowances under review are:

(1) Fringe benefits for employees of the hospital affiliated with the Center were claimed at the rate of 10% of salaries. The auditor disallowed \$9,478 as being in excess of the actual cost of the fringe benefits to the hospital.

(2) Part-time clerical staff at the affiliated hospital was supported through a payment of \$391. This amount was disallowed on the basis that a staffing grant may be used only so support technical positions held by individuals who had received requisite training for the work involved.

(3) Staffing payments of \$38,960 to nine affiliated agencies were disallowed on the grounds that the Regional Office had not given approval and the documentation failed to show compliance with requirements for such payments.

Discussion

Fringe Benefits. The Center recognizes that page 4-12 of the CMHC Policy and Standards Manual dated September 1, 1971 authorizes fringe benefits as costs chargeable to the grant

only to the extent that the benefits are itemized and a cost is actually incurred. It relies however upon the hospital's assertion that written and oral communications from HEW prior to the issuance of this policy indicated that the flat 10% amount would be acceptable.

The Center does not describe the oral communications it relies on and the only written communication it submits is that contained in a letter dated July 30, 1968 from the Associate Regional Health Director for Mental Health of HFW Region IX. That letter discusses a proposed revision of the initial grant application and suggests an increase in salaries requested "with the corresponding application of the 10% fringe benefits factor." The detailed budget for that application shows "related fringe benefits - previously approved rate 10%." The only other application in the file, that for the program year ending January 31, 1972, shows related fringe benefits of 10% of total salaries although the term "previously approved rate" is not used.

The Center fails to recognize that an approved budget and an approved rate for a budget do not automatically entitle the grantee to the amount so set. Instead they express the maximum for which the grantee may receive credit by making expenditures in compliance with the budget. The situation presented here is no different than one where a position might be filled at a salary which is less than the amount budgeted. Obviously, the inclusion in the approved budget of a salary allowance would not enable the grantee to claim more than the amount actually paid the employee. In fact, the regulation which was promulgated long before the grant was made permits "remuneration" for various types of fringe benefits as a part of the "allowable compensation" for which a staffing grant may be used. 42 CFR 54.303(b), issued March 1, 1966.

The Center adopts the further contention of the hospital that the grant funds covered only a portion of actual expenses related to the salaries of the employed individuals, as a result of which the amount disallowed was utilized for other purposes for which grant support was proper. Assuming that to be the case, it still would not justify the award of a grant as "fringe benefits" in excess of the amount actually expended for that purpose. If the hospital made other expenditures which justify the allowance of the \$9,478 involved here, a claim should have been based on the actual use to which such expenditures were put. Such a claim is not before us and the record contains nothing to justify an allowance.

Part-time Clerical (Non-Technical) Staff. The Center through its hospital affiliate contends that the disallowance under this item was improper because the personnel involved were "aides or clerks" and it questions the propriety of the HEW requirement of "psychiatric training" for such personnel. It asserts that the personnel were qualified to provide the services they performed but because only \$391 is involved the hospital did not plan to provide further information or argument.

The Center did not withdraw its appeal of this item and we are obliged to consider it regardless of the small amount involved. The applicable regulation issued March 1, 1966, 42 CFR 54.303 provides that the personnel whose salaries may be covered "shall be those persons who participate in the provision of an element or elements of service...and who are found by the Surgeon General to be appropriately qualified under the circumstances to occupy positions which require professional or special mental health training or experience." It is clear from the statement of the hospital that the personnel involved were not of that nature.

Staffing Payments to Affiliates. The Center paid a total of \$38,960 for staffing purposes to nine affiliated agencies. Of that amount \$17,369 was paid in the program year ending January 31, 1971 and \$21,591 was paid in the year ending January 31, 1972.

The grounds for the disallowance are:

1. The Center's grant applications did not provide for these particular staffing payments and the Center did not obtain Regional Office approval for them.
2. The Center failed to document that the payments supported identifiable positions which would enable affiliated agencies to provide new or increased services.
3. The Center did not show that it had an approved affiliation agreement with each of the agencies which, among other things, would assure proper accountability for use of grant funds.

The regulation required that an application describe the need for and kinds and quantities of staff services proposed and the professional qualifications required of each individual filing such a position. 42 CFR 54.303 (March 1, 1966) It also

required a showing that adequate and effective arrangements would be made to assure maximum coordination among agencies. The requirement for prior approval, however, was not absolute. A memorandum dated August 9, 1971 to Center Directors from the National Institute of Mental Health Grants Management Office and page 4-9 of NIMH CMHC Policy and Standards Manual of September 1, 1971, authorized Centers to revise previously approved staffing patterns without prior HEW Regional Office approval. The Centers were told that in such a case the revisions would have to be incorporated in the staffing information in the next continuing grant application and approvability would be considered by the Regional Office when it acted on the continuing grant. If the revision was not approved, further grants for the support of the revised staffing would be denied and funds previously expended for such unapprovable purposes would be disallowed on later audit. That policy was in effect at all times material to this case.

During the grant year which ended January 31, 1971, the Center decided to make the revision in staffing support which resulted in the payments in question here and apparently HEW was not notified of these payments until the Center filed an application for a grant continuation for the program year ending January 31, 1972. That application contained the following information about the payments.

Part V, page 3, under a heading "New Positions for which support is not requested," states:

"Funding was provided for the following out-patient positions: White Bird Clinic, Family Counseling Service, Eugene Hearing and Speech Centers, Christian Family Institute, Volunteers Services, Pearl Buck Center, Lane County Association for Retarded Children, Crisis Center (University of Oregon) and Buckley House. At the present time, insufficient data is available to evaluate for future funding requests. Therefore, no support is requested."

Under the heading "Explanations of changes in Part III (positions to be continued)" the application stated:

"No changes in staffing of approved positions: The lists in Part III of this application show the professional and technical staff positions

to be funded during the third year of the grant. The positions which were changed for 02 grant year have reverted to the job descriptions in the original grant application."

Attached to the January 8, 1971 application was a detailed budget for the year ending January 31, 1971. It referred to positions funded for each of the nine affiliates and purported to provide job descriptions for them. There was nothing, however, to indicate an intent to continue funding the positions for the forthcoming year. In fact the portions quoted above provided representations to the contrary.

The first recorded indication of HEW knowledge about the details of the payments and particularly of their continuation into the third program year (ending January 31, 1972) is contained in a memorandum dated September 27, 1971, written by a grants management specialist in the HEW Regional Office. She reported to the Associate Regional Health Director for Mental Health on a site visit she had made to the Center on September 21-22, 1971, stating that the Center allocated funds from unfilled positions to affiliated agencies equivalent to 59% of total salary costs and questioned whether the action met legal requirements. The report alleged other deficiencies in Center operations which are not relevant here.

As a result of the site visit the Associate Regional Health Director for Mental Health wrote the Center on October 4, 1971 describing three alleged major areas of program deficiencies, one of which related to the payments to affiliated agencies. The letter stated that additions or significant changes in Center operations must be approved by the Regional Office based on an agreement between the Center and each affiliate which assures continuity of care and justifications showing how the affiliate's program is part of the total Center offering. It informed the Center that grant funds may be used only for identified positions with qualifications shown and these must provide for new or increased services or a new method of delivery of services and affiliates must maintain records showing how the payments have been expended. The letter concluded that documents have not adequately supported disbursements to the new affiliates. It noted that the Center must soon file its continuing application for the fourth grant year and stated that a written plan to correct the deficiencies must be submitted by November 10, 1971 and the corrective steps implemented by January 15, 1972.

The Center responded in a letter dated November 3, 1971 to the Associate Regional Director for Mental Health. It described steps to remedy two of the major deficiencies which the Regional Office had identified and then stated:

Your third major deficiency concerned perceived inadequacies in the procedures by which we had disbursed monies to affiliate agencies, and entered into agreements with them. Here we believe that the problem was not so much with the Center's failure to use adequate procedures, but rather our failure to communicate adequately to the site visitors what had been done. Attached to this letter therefore you will find appropriate documentation. Not all records have been submitted for purposes of convenience and economy. We can provide further information if needed.

Also attached to this letter are copies of several memos and letters that document some of the actions that have been described above. These include communications from the board to various Center components, as well as policy statements and various letters of intent from components to the Center Board.

Our record does not contain the actual attachments to the letter but only a list of them. The only one listed which might bear on payments to affiliates is described as "Comments re: Disbursement of Monies."

The Regional Office responded on November 29, 1971, stating that the "plans to correct the major deficiencies ...[are] satisfactory for the areas of focus." It noted "favorably, your plans to...document accurately disbursement and financial transactions of monies from the Center to affiliate agencies."

On January 19, 1972, the Associate Regional Health Director for Mental Health acknowledged receipt of the Center's application for a continuation staffing grant and requested specific answers to the deficiencies noted in his letter of October 4, 1971. The response which related to payments to affiliates stated:

"All agencies, which were involved with the Center staffing providing these out-patient and research services, are member agencies

of the Lane County Community Mental Health Center and as such have had written agreements on file with the Center since the Center became operational, if not before."

Subsequently, the grant was approved, apparently without further communication regarding payments to affiliates, nor is there any indication that the Regional Office indicated that this matter was being held open for later resolution.

The grantee's appeal letter of September 17, 1974 claims that the Regional Office was kept fully informed at every step of the way, that the newly established Region X which took over administration of the grants from former Region IX used different criteria on approvability, that the staffing grant applications which ultimately were approved, adequately informed HEW, and finally, that the action was permitted by the NIMH Policy Manual.

None of these assertions is supported by the record, although our Order to Develop Record of April 26, 1976 specifically asked for material in support of them. In fact, the grant applications stated that payments had been discontinued and that no further support for such payments was requested at a time when apparently payments were continuing. Job descriptions were attached to the grant application for the third program year, but they apparently related to the payments for the prior year, which the application stated had been discontinued. Moreover, the job descriptions do not show that the payments were made to support particular individuals in specified jobs as required by the policy.

On this record the Regional Office would have been justified in notifying the Center that the payments to the affiliated agencies would be disallowed or that it was being held open until a closer review could be made on audit. But it did not do so. It received justifications from the Center which defended the acceptability of the affiliate payments. The failure of officials in the Regional Office to question the adequacy of the Center's response seems to us tantamount to an acceptance of the Center's position on the adequacy of the documentation.

The policy described by page 4-9 of the NIMH CHMC Policy Manual and the NIMH Grants Management letter of August 9, 1971 to Center Directors states that payments for staffing which were not approved in advance are subject to disallowance on audit if support for such staffing is found to be unapprovable when the next application for a continuation grant is acted on. This contemplates a decision of acceptability or nonacceptability

when information about the payments comes to the attention of the Regional Office. Here the matter came to the attention of the Regional Office which was in a position to obtain full information. Despite the misleading nature of the Center's application for the grant year ending January 31, 1972, the Regional Office had opportunity to clarify this matter in its subsequent dealing with the Center. Its failure either to make a decision or specifically to hold the matter open if it thought further information was needed should thus be taken as an approval, to the extent of its authority to approve.

The Center was not forthright in providing information to the Regional Office and its arrangements for making the questioned payments seem not to comply with the policies issued to implement the law and regulations. Still, we believe that the law and regulations themselves did not inherently preclude approvability. Accordingly, despite the shortcomings in the Center's operations, we cannot ignore the failure of the Regional Office to notify the Center in 1972, when the matter was before it, either that the payments would be disallowed or when and how a decision would be made.

Before issuing our decision, we asked for comment on the reasons the continuation grant was approved without Regional Office resolution of the status of the payments to affiliated agencies. The response was that such a resolution seemed unnecessary because the application for the continuation indicated that the grantee did not intend to make any further payments and, with respect to past payments, it claimed that appropriate agreements had been in effect. The Regional Office, however, was in possession of the application for the continuation when it wrote its letter of January 19, 1972 which stated that the continuation could not be approved until the grantee gave assurances that acceptable measures would be taken to correct the deficiencies. Thus, even though it knew then, or should have known, that the continuation did not provide for further payments it told the grantee that the deficiencies would have to be cleared up. Also, the Regional Office knew by then that the Center had taken the position that it was not deficient in this respect and that long standing cooperative agreements with the affiliated agencies were sufficient to meet the requirements. While the Regional Office did not regard such agreements as meeting the requirements, it appears to have done nothing to challenge the grantee's view or otherwise clear up the matter and, without telling the Center, decided to let the matter remain open for later settlement on audit.

We recognize the Center's lack of candor and also that the Regional Office might have felt no necessity to decide on approvability since the Center did discontinue the payments about the middle of 1972. We believe, however, that the Regional Office had sufficient indication of deficiencies that it owed a duty to assure full development and a prompt decision on approvability even though the matter was before it at a time when no further expenditures of the type questioned were involved. The Center would have been justified in believing that the Regional Office had accepted its explanation and that, therefore, it and the affiliates need not make contingent plans based on the possibility of disallowance. With considerable reluctance we decide that the \$38,960 should be allowed.

Conclusion

The disallowances of \$9,478 for fringe benefits and \$391 for clerical salaries are upheld. The claim of \$38,960 for payments to affiliated agencies should be allowed.

/s/ Francis D. DeGeorge

/s/ David V. Dukes

/s/ Edwin H. Yourman, Panel Chairman