

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

DATE: October 29, 1981

SUBJECT: New Mexico Human Services Department
(formerly Health and Social Services Department)
Docket No. 80-86-NM-HD
Decision No. 223

DECISION

The State of New Mexico Human Services Department (State) appealed the April 25, 1980 decision of the Acting Assistant Secretary for Human Development Services for the Office of Human Development Services (Agency) that upheld a revised disallowance of \$51,525 in claims for Federal financial participation (FFP) under Title XX of the Social Security Act for child day care services. The Regional Program Director, Region VI, Public Services Administration, issued the original disallowance on July 14, 1977. The State here appeals two parts of the Assistant Secretary's decision involving \$46,407 in FFP. For reasons discussed below, I sustain the disallowance.

At the State's request, this case is considered pursuant to the provisions of 45 CFR 201.14, as amended March 6, 1978 (43 FR 9265), with the Board Chair substituted for the Administrator, Social and Rehabilitation Service (SRS). Although the State had a right to a conference under those procedures, it did not request one. Further, I have determined that there are no material facts in dispute, and that a conference or hearing would not assist the development of the issues. The record on which this decision is based consists of the reconsideration record developed pursuant to 45 CFR 201.14(d), the State's appeal, the Agency's response, and information submitted by both parties during a telephone conference conducted by a Board member.

I. Certified Tribal Expenditure

The first issue concerns the State's claim for \$8,972 in FFP (based on \$11,962 in expenditures) for what the State alleges was a Mescalero tribal expenditure properly matchable under Title XX. The Agency in its reconsideration decision found that the amount in question --

was not a payment to the Tribe and should not have been reported as an expenditure. Since these claimed expenditures were not reported properly by the State, they were included in the original deferral/disallowance action.

In its appeal to this Board, the State indicated that the Agency's finding was based on unclear language in a letter from the State to the Agency dated April 15, 1977. The State argued that while this amount had originally been recorded by the State as a payment to the Tribe, it in fact represented certified expenditures reported by the Tribe for services to children. The State reasserts its claim for FFP on this basis.

The Agency in its reply brief argued that the FFP claimed would nevertheless be unallowable because no children were eligible for the period during which the expenditures were made, April 1, 1976 through September 30, 1976. In a telephone conference with a Board member, the Agency cited regulatory authority supporting that position, including 45 CFR 228.60, which provides that FFP is available in expenditures for services to an individual provided that the individual was "eligible" under Sections 228.60 and 228.61 at the time of the receipt of the service. During the same telephone conference, attorneys for the Agency and the State entered into the following stipulation concerning the eligibility of children for whom FFP was claimed:

The records of neither party contain information which permits the identification of the certified expenditure[s] at issue (\$11,962/\$8,972 FFP) with the period in which eligible children were receiving services and therefore [the expenditures] must be disallowed.

Based on the regulatory requirement that FFP is only available for expenditures for services to eligible individuals and the absence of evidence to demonstrate that the expenditures at issue were for services to eligible individuals, this part of the Agency's disallowance is sustained.

II. Claimed Payment under Pub.L. 95-291

The second issue in the State's appeal stems from a disallowance of \$37,435 in FFP under Title XX. The State, however, does not deny that this amount is not allowable under Title XX. Rather, the State argues that it effectively claimed \$37,435 in FFP under Title IV-A and as a consequence is entitled to a payment of \$5,615.25 under Pub.L. 95-291. The services from which the

claim arises were performed for the periods July 1, 1974 through June 30, 1975 and July 1, 1975 through September 30, 1975.

The primary issue is whether the State ever made a timely claim for FFP under Title IV-A in accordance with Pub.L. 95-291.

Pub.L. 95-291 provides for partial reimbursement to the States for social services rendered prior to the beginning of Title XX programs on October 1, 1975. Under section 2 of the law, a Title IV-A claim asserted on or after April 1, 1977 but prior to September 11, 1978 is to be paid at 15 cents on the dollar within specified limitations. Section 2 refers to a claim as one "that the Secretary determines was asserted against the United States, in the form and manner prescribed by the Secretary with respect to the filing of claims under titles I, IV-A, VI, VI, X, XIV, and XVI of the Social Security Act...."

The State argues that while it never asserted or filed a IV-A claim explicitly labeled as such for the periods in question, it in effect asserted a IV-A claim for the \$37,435 as of the last half of April, 1977. According to the State, this constructive claim occurred in a letter it sent HEW dated April 15, 1977 that indicated that the State would be claiming federal payment for social services provided prior to October 1, 1975. The State further argues that the essential data for a IV-A claim had already been provided to HEW through quarterly statements of expenditures for Title XX. The format and manner of submission of such quarterly statements, according to the State, was essentially identical for IV-A claims and Title XX claims. For this reason, the State asserts that it had satisfied the essential aspects of the requirement of Pub.L. 95-291 for the assertion of a claim in the form and manner prescribed for the filing of claims under the various titles of the Social Security Act.

The State adds that to hold otherwise would elevate form over substance. It submits that the Agency already knew about the claimed FFP amounts by virtue of the deferral/disallowance issued in 1977 and revised on May 8, 1978 and that any requirement that a specific form be used labeled "Title IV-A" would not have altered the claim as known by the parties. To illustrate the reasonableness of its position, it cites a 1929 tax case which held that a taxpayer's written statement would be sufficient to assert a claim against the IRS (rather than the formal legally phrased document) since the statement included sufficient facts to fully advise the tax collector of the claim. Stein v. United States, 31 F.2d 960 (W. D. Wash. 1929).

The Agency makes the following points in its response: (1) There are no funds available to award payment of a IV-A Pub.L. 95-291 claim; (2) the Board lacks jurisdiction to consider a IV-A payment as the Agency has not disallowed a IV-A claim; (3) the State was advised in writing by the Agency to submit its IV-A claim on a form separate from Title XX claims; (4) the State had knowledge of how to file a proper IV-A Pub.L. 95-291 claim as \$28,500 was previously paid the State under this authority; (5) the State's claim was not made in the form and manner prescribed by the Secretary as required by Pub.L. 95-291.

I uphold the Agency on this issue since a Title IV-A claim was not made by the State in the form and manner prescribed by the Secretary as required by Pub.L. 95-291. While it is true that the Agency has never formally disallowed a claim under Title IV-A, the Agency has effectively considered issues surrounding the validity of the claim for purposes of a payment under Pub.L. 95-291 in the April 25, 1980 reconsideration decision. Accordingly, this decision will also consider the substantive arguments concerning the validity of the claim.

Regulations concerning the filing of claims under public assistance programs were in effect at the time of the State's alleged IV-A claim and remained in effect for the duration of the period allowed for filing a IV-A claim under Pub.L. 95-291. These regulations required that the State agency submit "a quarterly statement of expenditures for each of the public assistance programs under the [Social Security] Act." (45 CFR 201.5(a); emphasis supplied.)

The State argues that it met "essential aspects" of the requirements of Pub.L. 95-291 for its Title IV-A claim by providing Title XX quarterly statements of expenditures which contained essential data for the IV-A claim and by referring to social services provided prior to October 1, 1975 in a letter dated April 15, 1977. The State, however, was reminded of its separate reporting responsibilities specifically for the expenditures in question in a letter from the Agency dated April 28, 1977. That letter was in response to the April 15th letter that the State cites as the basis for its claim. A subsequent memorandum prepared by the Regional Program Director, Public Services Administration, dated March 3, 1978, also cites the need for separate reports and indicates that the appropriate State agency had agreed to prepare separate IV-A and XX expenditure reports. The State was reminded to submit documentation relating to IV-A expenditures "directly to Washington for consideration in the retroactive claims." The Agency notes that when the State's claim was

never submitted as a separate IV-A claim, it failed to come to the attention of the official in the Public Services Administration delegated the authority to validate and pay claims made under Pub.L. 95-291. Further, the record demonstrates that the State knew how to file a proper IV-A claim under Pub.L. 95-291 since it submitted a separate claim for other IV-A expenditures incurred by it within the time frame prescribed by the law.

It is also significant that Pub.L. 95-291 authorized only funds "...not to exceed \$543,000,000 to remain available until expended...." The Agency states that \$543,000,000 has already been expended and argues that no funds would be available under the statute to make a payment at this time. There is no reason to disagree with this position and, indeed, the limitation "until expended" provides additional evidence of the necessity for a separate, timely filing.

Conclusion

The Agency's disallowance of \$46,407 in disputed FFP claimed under Title XX is upheld. \$37,435 of this amount, if properly claimed under Title IV-A, would have entitled the State to a payment of \$5,615.25 under Pub.L. 95-291.

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