

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Colorado Department of Social DATE: December 31, 1981
 Services
 Docket No. 80-39-CO-HD
 80-70-CO-HD
 80-118-CO-HD
 Decision No. 243

DECISION

The Colorado Department of Social Services (State) appealed parts of three disallowances by the Office of Human Development Services (Agency) of costs claimed for training activities under Title XX of the Social Security Act. The items appealed are identified and discussed separately below. This decision upholding the disallowances in part and reversing them in part is based on the written record, including a written confirmation of the telephone conferences held by the Board with the parties.

State Agency Staff Development Personnel Costs Distributed to the
Common Supportive Cost Center

The issue here is whether costs claimed under Title XX for State agency staff development personnel pursuant to the State's cost allocation plan are allowable. The plan establishes three cost centers to which staff development personnel costs are distributed: Social Services, Assistance Payments/Medical, and Common Supportive. The amount in each cost center is then allocated to various programs, (Title XX, IV-A, IV-B, XIX, etc.), and provides the basis on which Federal financial participation is claimed. The amount in the Common Supportive cost center was allocated to the various programs on the basis of an estimate derived from a random sample of the actual hours spent on training for each program during a three-day period by staff development personnel in each county. The Agency disallowed staff development personnel costs in the Common Supportive cost center which were allocated to Title XX.

The Agency did not dispute that the costs were claimed in accordance with the State's cost allocation plan (except as noted below). It argued, however, that the applicable regulation does not permit staff development personnel costs to be claimed based on an estimate of hours.

The regulation on which the Agency relied, 45 CFR 228.84(b), provides that costs matchable as training expenditures include --

State agency staff development personnel. For State agency staff development personnel (including support staff), assigned full time to training functions with respect to State agency or provider agency staff: salaries, fringe benefits, travel and per diem. (Costs of staff spending less than full time on training for the title XX program . . . must be allocated according to the time actually spent on such training.) (Emphasis added.)

We do not view the phrase "time actually spent" as precluding the type of estimate used by the State in this instance, however. Estimates based on random samples are commonly used by the Department of Health and Human Services to determine amounts improperly charged to Federal funds. See, University of California -- General Purpose Equipment, DGAB Decision No. 118, September 30, 1980. Such estimates are deemed sufficiently precise despite the fact that a single sample estimate may not be exactly equal to the true value that would be derived from a complete enumeration of all the items in the universe sampled. B.J. Mandel, Statistics for Management, p. 239 (4th ed. 1977). Thus, in our view, as long as the data used in the sample consisted of time actually spent on training, the State's estimate derived from statistical sampling of total time spent on training is an acceptable basis for claiming Federal financial participation under 45 CFR 228.84(b). There was no dispute about whether the sampling techniques employed by the State were proper.

The Agency did argue that the State's cost allocation plan specifically prohibits the State from claiming costs under the plan which are not allowable under the statute or regulations applicable to a particular program. Since we conclude that the costs are allowable under 45 CFR 228.84(b), however, we need not address this contention.

The Agency also questioned the State's claim on two other bases: (1) that non-Title XX costs may have been included in the claim; and (2) that there may have been dual claiming of the costs both as Title XX training costs and as non-training costs under Title XX. The Agency did not explain on what basis it believed these situations might have existed, however. In the absence of any such explanation, we are unable to assess the validity of the Agency's objections. Accordingly, the appeal regarding this item is sustained.

Arapahoe County Extension Office

The issue here is whether the entity which furnished training was a State agency under 45 CFR 228.84(b) or an outside expert under 45 CFR 228.84(c). The Agency conceded that the costs in dispute, with the possible exception of one line item, would be allowable if Section 228.84(b) were applicable, but maintained that Section 228.84(c), which allows none of the costs, is the applicable provision. The State did not dispute that none of the costs would be allowable if Section 228.84(c) were the applicable provision.

Both parties agree that the training in question was furnished by the Arapahoe County Extension Office. (Application for Review, Docket No. 80-39-CO-HD, p. 2; Agency's Response to Appeals, dated June 26, 1980, p. 6.) The State asserted, however, that the formal contractor was the Arapahoe County Board of Commissioners and that the status of the Board of Commissioners should determine whether Section 228.84(b) or Section 228.84(c) is applicable. The State further asserted, and the Agency agreed, that the Arapahoe County Board of Commissioners was a part of the "State agency" under 45 CFR 228.1, which defines the term to include "local agencies administering the [State's social services] program under the supervision of the State agency." (Confirmation of Telephone Conferences, dated November 27, 1981, p. 2.)

The State's position that Section 228.84(b) applies by virtue of the fact that the Board of Commissioners is a "State agency" is not persuasive. Since the training was actually provided by the Arapahoe County Extension Office, the Extension Office itself must have been a "State agency" within the meaning of Section 228.1 in order for the costs to be properly claimed as "State agency training activities" under Section 228.84(b). The Extension Office could be considered a "State agency" only if it were shown to be a part of the Board of Commissioners or if it independently fit the definition of a "State agency." The State did not argue that the Extension Office was a local agency administering the Title XX program under the supervision of the State agency and that the Extension Office thus independently qualified as a "State agency."

In response to the Board's inquiry regarding the relationship of the Extension Office to the Board of Commissioners, the State cited a Colorado statute providing that "two or more counties may join in financing agricultural extension service furnished counties by the university," with the cost of such work to be determined "by negotiation between the state board of agriculture and the board of county commissioners of each such county." 1973 C.R.S. 23-30-113. It is not clear how this provision applies in the instant case since it does not refer specifically to county extension offices. The State also furnished

a copy of a document captioned "Donation Contract," effective from January 1, 1978 through June 30, 1978 (the period in question here), which states in part that "Arapahoe County Board of Commissioners (Arapahoe County Extension Office) has agreed to provide education and training for persons who are providing services to Title XX services recipients." The contract does not define the nature of the relationship between the Board of Commissioners and the Extension Office, however. Thus, there is no basis for a determination that the Extension Office qualifies as a "State agency" by virtue of its relationship with the Board of Commissioners.

Since the State has not shown that the Extension Office which actually provided the training was a "State agency," we conclude that Section 228.84(b) was not applicable and that the disallowance was properly taken since none of the costs are allowable under Section 228.84(c). In view of this conclusion, we need not address the Agency's contention that, regardless of the status of the Extension Office, the costs were not allowable since there was no purchase of service contract between the Board of Commissioners and the Extension Office.

JFK Outreach Program

The issue here is whether the entity which furnished training was an outside expert under 45 CFR 228.84(c), a provider agency under 45 CFR 228.84(f) and (g)(2), or an educational institution under 45 CFR 228.82. All, some, or none of the administrative costs claimed by the State may be allowable, depending upon which section of the regulation applies.

The State contended that Section 228.82 applied since the JFK Outreach Program was part of the University of Colorado Medical Center, an educational institution. All of the administrative costs claimed would be allowable under this section. In response to the Board's observation that the contract between the University of Colorado Medical Center -- JFK Outreach Program and the Adams County Department of Social Services for the provision of training did not appear to conform to the specific requirements of Section 228.82, the State conceded that fact. The State argued, however, that the costs in question should be allowed since necessary training services were provided and since the State was unaware that the contract did not meet regulatory standards. Such collateral arguments cannot prevail where the clear terms of the regulation are not met, however. Cf. Wisconsin Department of Health and Human Services, Decision No. 116, August 14, 1980, at p. 6; and New Jersey Department of Human Services, Decision No. 120, September 30, 1980, at p. 3. Thus, although the JFK Outreach Program may have been an educational institution, its training costs are not reimbursable under Section 228.82.

The Agency maintained, on the other hand, that Sections 228.84(f) and (g)(2) applied since the JFK Outreach Program was a provider agency. None of the administrative costs claimed would be allowable under these provisions. The basis for the Agency's position is not clear. This Board has previously held that the term "provider agency" or "provider" refers to an entity whose primary function is to furnish Title XX services. South Dakota Department of Social Services, Decision No. 180, May 29, 1981, at p. 5. Although, under the regulations implementing Title XX, reimbursement is available for the cost of training furnished by a provider agency to its own staff or to state agency staff, there is no basis for treating as a provider an entity which furnishes exclusively training. Since the State has asserted without contradiction that the JFK Outreach Program furnished only training, it cannot properly be considered a provider agency.

We find, however, that training costs may have been reimbursable under Section 228.84(c), since the JFK Outreach Program was an expert "outside the State agency engaged to develop or conduct special [training] programs...." The fact that the JFK Outreach Program may have been an educational institution would not preclude it from being considered an outside expert. The Agency argued, however, that the JFK Outreach Program was not an outside expert because it provided an entire training program rather than training which merely supplemented State agency training. In support of this argument, it cited an Agency issuance identified as PIQ 77-31, dated April 1, 1977, and an August 25, 1977 Addendum to PIQ 77-31. (We do not address the question whether the State had adequate and timely notice of these issuances in view of the conclusion reached below.) PIQ 77-31 states, in pertinent part, that "[e]xperts, for purposes of ... Title XX ... are ... hired from outside the agency to supplement the regular training staff in special programs." The Addendum states, in pertinent part, that "[t]he States are not precluded from hiring 'experts' to supplement their regular training staffs where particular expertise is needed." This definition of "expert" does not necessarily exclude the JFK Outreach Program, however, since the Agency has not shown that training furnished by the JFK Outreach Program took the place of all training by State agency staff development personnel. Moreover, the Addendum to PIQ 77-31 specifically states that experts may be employed "either as individual consultants or from a firm ...," so that it is clear that training furnished by an organization ("firm") such as the JFK Outreach Program can supplement State agency training within the meaning of the PIQ. Thus, these Agency guidelines do not alter our conclusion that the JFK Outreach Program was an outside expert within the meaning of Section 228.84(c).

Although the parties were asked by the Board to identify those costs claimed which would be allowable if Section 228.84(c) were applied, they failed to do so. They should therefore consult with each other upon receipt of this decision to determine what, if any, costs are allowable under Section 228.84(c). The State may appeal to the Board if the matter is not resolved to its satisfaction.

We note that the Agency argued that even if the costs were otherwise allowable, the State might be precluded by 45 CFR 228.53(b) from claiming Federal financial participation if it used Federal funds from sources other than Title XX to cover the costs incurred by the JFK Outreach Center. Section 228.53(b) provides that "... public funds used by the State or local agency for its services programs may not be used as the State's share in claiming FFP where such funds are: (1) Federal funds not authorized by Federal law to be used to match other Federal funds" The Agency stated that its concern was prompted by a reference, in the contract for the provision of training, to "donated funds" to be used to purchase the training. The State asserted, however, that although it could not determine whether the donated funds were Federal or non-Federal, it had not claimed FFP in the amount of the donated funds. The Agency conceded that if that were the case, there was no violation of Section 228.53(b), but questioned how the State would know that no FFP was claimed on this basis if it was unable to determine the source of the donated funds. No reason appears why the State would need to know the source of the funds in order to determine whether FFP had been claimed, however. Since the Agency did not question the State's assertion on any other ground, we conclude that there was no violation of Section 228.53(b).

Human Development and Research Center

The issue here is whether the Human Development and Research Center is an outside expert under 45 CFR 228.84(c) or a provider agency under 45 CFR 228.84(g)(1) and (2), and whether any of the administrative costs claimed are allowable under the applicable provision. The notice of disallowance in Docket No. 80-70-CO-HD stated that "[t]he Human Development and Research Center is a provider of services under a purchase of service contract and also provides Title XX training under a training contract" As indicated in the discussion of the JFK Outreach Center, an entity other than a state agency whose primary function is to provide Title XX services is a provider agency and not an outside expert. Although the State described the Human Development and Research Center as "a consulting organization that provides services with respect to the management of social services programs," it did not deny that the Center provided Title XX services as well as training. We thus conclude that Section 228.84(g)(1) and (2) apply. The Agency took

the position that no administrative costs are allowable under these provisions. It seems possible, however, that some of the expenditures in question might represent the "cost of teaching supplies and purchase or development of teaching materials and equipment" which are allowable under Section 228.84(g)(2). Accordingly, the parties are directed to consult with each other upon receipt of this decision in order to determine whether any of the costs in question are so allowable. The State may appeal to this Board if the matter is not resolved to its satisfaction.

Colorado Department of Institutions "TRACY Project" and Larimer County
Mental Health Center

During the course of proceedings before the Board, the Agency withdrew the disallowance under this heading except with respect to Federal financial participation claimed for operating expenses and capital outlay. (Response to Appeals, dated June 26, 1980, pp. 4-5.) The State argued that the remaining costs were incurred for the "purchase or development of teaching materials or equipment" under 45 CFR 228.84(g)(2). The audit workpapers do not specifically identify any of the costs claimed as teaching materials and equipment, however, and the State was unable to provide documentation further describing the costs. (Response to Order to Develop Record, dated October 23, 1981, p. 2.) Accordingly, the remaining disallowance is sustained.

County Contractual Training

The disallowance was taken on the ground that the State was unable to produce any supporting documentation for the costs claimed, and thus failed to comply with 45 CFR 228.17, requiring the maintenance of records necessary for the proper and efficient operation of the State's Title XX program. The State conceded during the course of proceedings before the Board that it was responsible for producing such documentation and that it could not do so. (Response to Order to Develop Record, dated October 23, 1981, p. 2.) Accordingly, the disallowance is sustained.

Travel Costs for Training of Less Than Five Days

Both parties agreed that, consistent with Colorado Department of Social Services, Decision No. 200, July 31, 1981, the appeal should be granted with respect to those costs incurred during the quarters ended September 30, 1978, December 31, 1978, and March 31, 1979, and that the disallowance should be sustained with respect to those costs incurred during the quarter ended June 30, 1979. (State's Response to Order to Develop Record, dated October 23, 1981, p. 3; Agency's Response to Order to Develop Record, dated October 21, 1981, p. 9.)

County Operating Costs—Membership Dues

During the course of proceedings before the Board, the Agency withdrew the disallowance except with respect to the cost of an individual membership in and a conference registration fee paid to the American Public Welfare Association. (Response to Appeals, dated June 26, 1980, p. 12.) The State subsequently withdrew its appeal of the disallowance of the conference registration fee. (Response to Order to Develop Record, dated October 21, 1981, p. 3.) It maintained, however, that the cost of the individual membership was allowable under 45 CFR 228.84(a)(3), since "[m]embership in the APWA entitles persons to materials which could constitute part-time training" (Response to Order to Develop Record, dated October 23, 1981, p. 2.) Section 228.84(a)(3) provides for Federal financial participation in the education costs of State agency employees in part-time training programs. Although membership in a professional association such as the APWA may be of educational value, the cost of membership does not thereby become an education cost within the meaning of the regulation. The governing regulation is instead 45 CFR Part 74, Appendix C, Part II, Section B.19(a)(2), which states that "[t]he cost of membership in ... professional organizations is allowable provided ... (2) the expenditure is for agency membership" Since the membership in question here was an individual one, we conclude that the disallowance of the membership cost was proper.

County Operating Costs—Other Costs

The State appealed the disallowance of payments in the amount of \$44,310.02 made under a contract for automatic data processing services in Jefferson County, claiming that they were allowable as State agency training activities under 45 CFR 228.84(c). None of the costs listed on the invoices submitted for such services clearly correspond to costs allowable under Section 228.84(c), however. The State conceded that it could not supply documentation further identifying the costs. (Confirmation of Telephone Conferences, dated November 27, 1981, p. 4.) Accordingly, we sustain the disallowance.

Training Non-Eligible Trainees

During the course of proceedings before the Board, the State conceded that the disallowances should be sustained. (Response to Order to Develop Record, dated October 23, 1981, p. 3.)

Unallowable Stipend Payments

The Agency disallowed Federal financial participation claimed for full-time training of three county employees on the ground that the

county did not comply with 45 CFR 228.83(a)(1). This regulation requires that such trainees "have a legally binding commitment to continue to work in the State or provider agency for a period of time at least equal to the period for which financial assistance [in the form of paid training] is granted." The State was unable to document any such commitments for the three individuals or to show that the period of time actually worked at least equalled the time for which assistance was granted. (Response to Order to Develop Record, dated October 23, 1981, p. 3.) Accordingly, we sustain the disallowance.

Outside Experts—Western Federation for Human Services

During the course of proceedings before the Board, the State withdrew its appeal of the disallowance for this item. (Confirmation of Telephone Conferences, dated November 27, 1981, p. 5.)

Conclusion

For the reasons specified above, the appeals are granted in part and denied in part. The disposition of the various items is summarized below. The numbered "findings" in the notifications of disallowance which correspond to the descriptions below of the items appealed are shown in the Board's August 31, 1981 Order to Develop Record.

Common Supportive Costs--allowed

Arapahoe County Extension Office--disallowed

JFK Outreach Program--returned to the parties for further consideration of the effect of the applicable regulation

Human Development and Research Center--returned to the parties for further consideration of the effect of the applicable regulation

Colorado Department of Institutions "TRACY Project" and Larimer County Mental Health Center--disallowed

County Contractual Training--disallowed

Travel Costs for Training of Less Than Five Days--disallowed only for quarter ended June 30, 1979, allowed for other quarters

County Operating Costs--Membership Dues--allowed except for individual membership in APWA and conference registration fee

County Operating Costs--Other Costs--disallowed

Training Non-Eligible Trainees—disallowed

Unallowable Stipend Payments--disallowed

Outside Experts-Western Federation for Human Services—disallowed

/s/ Donald F. Garrett

/s/ Norval D. (John) Settle

/s/ Cecilia Sparks Ford, Presiding Board Member