

DEPARTMENTAL GRANT APPEAL BOARD

Department of Health and Human Services

SUBJECT: New Jersey Department of Human Services      DATE: September 30, 1980  
Board Docket No. 78-136-NJ-HD  
Decision No. 120

DECISION

The New Jersey Department of Human Services (State) filed with the Board an application for review dated November 29, 1978, pursuant to 45 CFR Part 16 (as amended March 6, 1978), of the disallowance of \$124,201 in Federal financial participation (FFP) claimed for expenditures for services provided by day care centers under Title XX of the Social Security Act. The disallowance was issued by the Acting Regional Program Director, Administration for Public Services, on September 12, 1977 and affirmed by the Assistant Secretary for Human Development Services (OHDS or Agency) on November 2, 1978 after reconsideration pursuant to 45 CFR 201.14. This decision is based on the State's appeal, the Agency's response, and a Draft Decision issued by the Board. The Draft Decision invited comments from the parties and noted that the Board might issue a final decision in substantially the same form. Neither party responded to the Draft Decision, and it is here adopted as the Board's final decision.

Statement of the Case

The State of New Jersey engaged independent public accountants to audit a number of day care programs after apparent deficiencies were discovered by the New Jersey State Office of Fiscal Affairs. The Audit Review Council of the New Jersey Department of Human Services reviewed the audit recommendations of these independent public accountants and subsequently transmitted the audits to the Office of Human Development Services in Region II. Region II reviewed the audits to determine the appropriateness of the expenditures and the extent to which services were provided. The review confirmed the audit findings and resulted in a disallowance of \$1,046,392 in FFP for funds paid to the State from 1973 to 1976.

In the disallowance letter OHDS requested that a decreasing adjustment of \$1,046,392 be shown on New Jersey's next quarterly statement of expenditures. OHDS also informed the State that if the appropriate adjustment was not made and reconsideration was not requested, the disallowed amount would be deducted from subsequent grants to the State. OHDS acknowledged in the disallowance letter that the \$1,046,392 disallowance should be reduced by whatever refunds might have been collected from the day care centers and already credited to the Federal government.

The amount appealed in this matter, \$124,201 in FFP, was expended under the authority of Title XX of the Social Security Act. The balance of \$922,191 was expended under Title IV-A of the Social Security Act and is not involved in this appeal.

The State's position is that the Agency should not adjust or collect the disallowed expenditures unless and until the State has recovered or collected the disallowed amounts from the providers. The State also alleges that the Agency's proposed adjustment of funds will adversely affect and result in curtailment of needed services to disadvantaged citizens.

The Agency's position is that there is no authority either for delaying collection of the disallowed amounts until the State has recovered the funds from the providers or for waiving claims which cannot be collected from the providers. The Agency argues that it is fundamental to the Federal-State relationship in grant programs that the Federal government look to the State for recovery of inappropriately expended funds.

#### Statutes

Section 2002(b) of Title XX of the Social Security Act, governing the procedure for payments to the States under the Title XX program, provides:

- (1) Prior to the beginning of each quarter the Secretary shall estimate the amount to which a State will be entitled under this section for that quarter on the basis of a report filed by the State containing its estimate of the amount to be expended during that quarter with respect to which payment must be made under this section, together with an explanation of the bases for that estimate.
- (2) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to the State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

#### Discussion

The disallowance in this case is based on a determination by the Federal government after review of State audits and recommendations. It is the State, not the day-care centers, which is appealing the disallowance. The State has not disputed the audit findings, the amount of the disallow-

ance, or the Agency's legal right and basis for taking the disallowance. The State has not disputed that the disallowed amount represents an overpayment to the State within the meaning of Section 2002(b). The State challenges only the practice of implementing the disallowance by reducing subsequent grant awards.

Section 2002(b) of Title XX of the Social Security Act provides an explicit legal basis for the procedure the Agency has followed. The record indicates that the majority of the audit exceptions resulted from the State's ineffective administration of grant funds. It is not unreasonable in such an instance to require the State to bear the burden of replacing those funds even if many of the facilities involved may be unable to reimburse the State.

Although it does not contest the audit determinations, the State makes a collateral equitable argument that the reduction of subsequent grants, if taken before State recovery from providers, will have an unfavorable impact on the State's ability to provide services to disadvantaged citizens. Although the Board recognizes that such a situation would be unfortunate, the Board concludes that unauthorized expenditures should not be excused on the basis of hardship. *American Foundation For Negro Affairs*, DGAB Docket No. 79-4, Decision No. 73, December 28, 1979, p. 3. The Board's function is to reconsider the disallowance based on the applicable statutes and regulations. While the adverse impact of disallowances was a factor in the decision of Congress and the Department of Health, Education, and Welfare (HEW) to establish a reconsideration process, that process must be governed by adjudicative principles, which require that substantive issues be decided on their merits.

The State has noted in correspondence with the Agency that "an unavoidable consequence of a Federal policy which automatically assumes full recovery could be a reticence on the part of any state to aggressively engage in much needed audits of social service expenditures of all kinds." This policy consideration is outweighed, however, by other policy considerations, including the likelihood that if states are held fully accountable for overpayments they may be more careful to conduct their grant programs so as to ensure that grant funds are spent in accordance with Federal requirements. Moreover, Section 74.61 of Title 45 of the Code of Federal Regulations requires HEW grantees to conduct audits on a continuing basis at least every two years. Thus, it is clear that auditing is an obligation which the State assumes in accepting the grant funds.

Conclusion

For the reasons stated, this appeal is denied. In determining the amount of money currently owed to the Federal government, the Agency should allow for any adjustments of Title XX funds already recovered from the providers and credited to the Federal government by the State.

/s/ Clarence M. Coster

/s/ Donald G. Przybylinski

/s/ Norval D. (John) Settle, Panel Chairman