DEPARTMENTAL GRANT APPEALS BOARD

The Department of Health, Education and Welfare

SUBJECT: State of Minnesota,
Department of Public Welfare
Audit Control #05-50088
Docket No. 75-15
Decision No. 26

DATE: August 17, 1976

DECISION

This appeal by the State of Minnesota Department of Public Welfare ("Grantee") by letter dated September 18, 1975 ("Appeal") asks the Departmental Grant Appeals Board ("Board") to review an adverse determination made by an ad hoc review committee of the Health Services Administration ("HSA") upholding a disallowance of certain expenditures incurred by Grantee in its Crippled Children's Services Program (the "Program"). The disallowance involves $404,314 expended by Grantee for the Program during the period July 1, 1970 to November 27, 1973 on account of services and items purchased in fiscal years prior to the one for which the funds were given to Grantee, and resulted from audit exceptions contained in HEW Audit Report No. 05-50088.

The amounts involved in the Appeal are $5,959 from Fiscal Year 1973 project grant funds, used to pay for services rendered during Fiscal Year 1972, and $76,380 from Fiscal Year 1974 project grant funds, used to pay for services rendered in Fiscal Year 1973. An additional amount of $321,975 in formula grant funds, similarly applied to discharge obligations incurred in prior fiscal years, is not within the Board's jurisdiction (see 45 CFR §16.2(a)(1)) absent, in this case, a designation of the Assistant Secretary for Health, which designation has not been made. Thus, this decision will deal only with the project grant funds.

By letter dated May 21, 1976, the parties were notified that the Board had determined pursuant to 45 CFR §16.60(c)(2), that (a) there appeared to be no dispute as to a material fact and (b) accordingly, the matter would be determined in accordance with 45 CFR §16.61 on the basis of the existing documentary record (specified in the Appendix hereto) and any additional written briefs the parties desired to submit.

In its Appeal, Grantee has conceded that funds granted it for services to be provided in one fiscal year "were expended from one fiscal year to pay for a prior year's services," and has also tacitly conceded that such expenditures violated Chapter 17-1.5B.1 of the Federal Health Grants Manual. Grantee in the Appeal has offered several justifications for these expenditures, as follows:

(1) "there exists no evidence that grant monies were ever used for anything other than proper Crippled Children's Services expenses;"

(2) the Grantee has taken corrective action to prevent further such occurrences;

(3) Congress did not intend that certain groups of children or certain states be penalized, as would occur if the State of Minnesota were required to repay the funds in question;

(4) it would be "virtually impossible and inappropriate for us to now attempt to seek repayment from the medical vendors who provided the services;"

(5) to sustain the disallowance "would unfairly reflect upon what has been and continues to be an outstanding program;" and

(6) "HEW had never enforced this provision [Chapter 17-1.5B.1 of the Federal Health Grants Manual] in the past."

In conclusion, Grantee asks that consideration be given to the fact that the children in the Program needed "immediate medical care which could not be deferred until such time as the necessary fiscal year allocation was available to the State Agency."

In its final brief, Grantee has largely repeated these justifications in substance, if not in precise terms, but has added arguments that (7) it was faced with a "dilemma" of a "perplexing, but not unusual, accounting problem" in cases where service and provider billing occurred in separate fiscal years and (8) the Federal Health Grants Manual provision in question has "absolutely no legal basis."

None of Grantee's justifications is meritorious. Points 1 and 3 above clearly argue for too much. Each would lead to the conclusion that no accountability procedures or fiscal standards established by Federal grant agencies could be enforced so long as expenditures were for proper programmatic purposes. The comment that Congress did not intend that "certain groups of children" be penalized by the failure of States to meet their grantee responsibilities is dismissed as a rhetorical flourish. This Appeal relates solely to the relative fiscal responsibilities of the Federal government and the State of Minnesota.

The Grantee's point that corrective action has been taken to prevent recurrence of the problem is not only irrelevant, as it concedes, but is also not supported by the record. Indeed, the record indicates that as late as 1975, the Grantee continued to condone the practice of paying for one year's services from a later year's grant funds.

Grantee's fourth and fifth justifications are also plainly irrelevant. No one has suggested that recoupment be attempted from vendors. Indeed, any such attempt by Grantee would appear, as Grantee states, to be totally inappropriate and unjustified. Nor is the Program's reputation at issue in this appeal.

The grantee's sixth justification, that HEW had previously failed to enforce Chapter 17-1.5B.1 of the Federal Health Grants Manual bears further discussion. At first blush, we would suppose that an agency's prior failure to enforce clearly articulated governmental policy could not estop a later effort at enforcement. But beyond that, the record is replete with evidence of attempts by HSA and predecessor agencies to cause Grantee to end its practice of expending more grant funds than it had available. Grantee cannot now complain that HSA or its predecessor agencies should earlier have required refunds.

It should be noted, in response to the Grantee's argument regarding emergency medical care, that the record contains no evidence whatsoever that emergency medical care, rather than non-emergency or optional or less necessary expenditures, was the cause of the prior year's over-obligation of funds, or any justification for a charge of such over-obligation, if such was the cause, to the next year's Federal grant rather than to State funds.

It is also not clear to the Board why the accounting "dilemma" faced by Grantee could not have been solved by reserving from current year grant funds sufficient funds to cover services rendered during that year or by using other accounting techniques used by state agencies generally to limit expenditures to the funds available to it.

The Grantee's final argument, that the provision of the Federal Health Grants Manual in question (Chapter 17-1.5B.1) has "absolutely no legal basis," was made in response to the Board's request for an analysis of the "legal status" of that Manual. The responses of both parties to that request are clearly inadequate. Grantee's assertions of lack of legal basis, without authority or analysis, are matched by HSA's equally bare assertions that the Manual has not been "superseded". In the present case, we believe that the Manual's provisions were adequately made known to Grantee, accepted by Grantee as applicable and incorporated by reference in the applicable grant terms sufficiently to preclude Grantee's denial now of their applicability. Nonetheless, until the provisions of the Federal Health Grants Manual are promulgated by HEW pursuant to its rule-making authority, the Board will view their applicability as limited to grants as to which the provisions thereof have clearly been incorporated in the grant terms.

It should be emphasized that tne requirements of Chapter 17-1.5B.1 of the Federal Health Grants Manual relating to the use of current year grant funds for current year services are not arbitrary bureaucratic devices for Federal meddling in state service programs. The purpose of this requirement, simply stated, is to try to insure, in a world in which there are simply not enough funds available to provide all necessary services to all children or other persons in need, a rational process by which funds which are available are allocated to priority needs as identified by the grantee agencies. In the present case, prior experience surely must have demonstrated to Grantee the need to allocate a certain percentage of available funds for medical emergencies, if such was the cause of the prior years' over-obligations (which, as previously stated, is at best a speculative conclusion on this record). A failure by a grantee to plan and monitor its projected expenditures by reference to a set of articulated priorities within fiscal year limitations as to available funds will likely lead to

expenditures benefiting some with lesser needs at the expense of others with greater needs. Such misallocation is a disservice to the basic program objectives for which the funds are provided as well as to those individuals in need.

Finally, the Board notes that the principles of Chapter 17-1.5B.1 of the Federal Health Grants Manual are consistent with those applicable to other Federal grant programs. See Board Decision No. 10, November 6, 1975, giving effect to a similar requirement in an applicable National Institutes of Health policy manual. See also 45 CFR §74.171 and Appendix C thereto, Part II.C.6.

CONCLUSION

Grantee's appeal is denied. HSA's decision to require reimbursement of $82,339 from the Minnesota Department of Public Welfare is sustained.

/s/ Wilmot R. Hasting, Panel Chairman

/s/ Bernice L. Bernstein

/s/ Francis D. DeGeorge