

DEPARTMENTAL APPEALS BOARD

Department of Health and Human Services

SUBJECT: North Carolina            DATE: October 12, 1988  
          Department of  
          Administration  
          Docket No. 88-95  
          Decision No. 991  
          Audit Control No. A-04-87-05065

DECISION

The North Carolina Department of Administration, Governor's Advocacy Council for Persons with Disabilities (State), appealed a determination by the Commissioner, Administration on Developmental Disabilities, Office of Human Development Services (Agency, OHDS), disallowing \$5,505 of a 1982-83 fiscal year Developmental Disabilities Protection and Advocacy grant (grant). OHDS found that the funds were expended for a revised subgrant project that differed significantly from the original subgrant project and, therefore, constituted a re-obligation of grant funds beyond the end of the allowable period, which was September 30, 1983.<sup>1/</sup>

As discussed below, we find that the revised subgrant project constituted a new subgrant which re-obligated the funds in question beyond the permissible 1982-83 fiscal year. Accordingly, we affirm the Agency's disallowance.

Background

The facts of this case, and the actions leading up to the disallowance, are not in dispute. The State was a recipient of a grant from OHDS for the 1982-83 fiscal year. On September 26, 1983, the State entered into a performance agreement with a subgrantee, the Eastern Carolina Legal Services, Inc. (ECLS) for a project to provide advocacy services to developmentally disabled and minority consumers for the project period September 30, 1983 to September 30, 1984. State's Att. 3. The services to be provided by ECLS were detailed in its project

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<sup>1/</sup>The Agency also disallowed \$284 in unallowable interest for a total disallowance of \$5,789. The State did not appeal the interest disallowance.

proposal entitled "Minority Outreach Project Grant Application." Id. The proposal stated, in relevant part:

The joint model project proposed here between ECLS and Operation Care focuses on developing community awareness among low income Black families in Wilson county about learning and needs for the disabled children. The project also aims at development of leadership and support on this issue in the disadvantaged Black community. Some legal and social information about learning for disabled children would be disseminated to the Wilson county participants. In short, the model project will attempt to develop a family support network in the county, while at the same time build self advocates from among low income families who could work directly on their own behalf on problems affecting their children.

State's Att. 3.

The State and ECLS expressly incorporated the entire project proposal into the performance agreement. It is undisputed that the agreement between the State and ECLS was a timely obligation of the 1982-83 fiscal year grant funds. Further, it is undisputed that the State and ECLS amended the performance agreement to extend the project period to June 30, 1985. See State's August 31, 1988 submission.

Both parties to this appeal agree that ECLS did not perform the services detailed in the project proposal by the extended performance date. On July 19, and July 25, 1985, after the subgrant to ECLS had expired, two memoranda of agreement were executed. In the first agreement, ECLS, the original subgrantee, agreed to the transfer of the subgrant to Legal Services of North Carolina (LSNC), the "replacement" subgrantee. In the second agreement, the State, as the recipient of the grant funds from OHDS, and LSNC, the replacement subgrantee, agreed upon the terms for the transfer of the subgrant. The agreements provided that LSNC would be responsible for all financial reporting; however, performance of an amended project was delegated to Carolina Legal Assistance (CLA).

Instead of continuing the original outreach project, as described above, the State's agreement with LSNC provided that a Disability Issues Conference, as submitted by CLA, would become the amended project. State's Att. 4. The

CLA conference was held on September 30, 1985 and the stated objective was to--

host a conference on community services involving persons in policymaking roles, persons in direct service roles, parents of and advocates for disabled persons, and others to discuss and plan for a means of meeting the overwhelming need for additional community services for people with mental disabilities in North Carolina.

Agency's Ex. 7.

The State auditor's financial audit report, for the year ending June 30, 1986, determined that the State had improperly expended the funds at issue. Specifically, the audit report stated, in relevant part:

The [State] department obligated 1983 Developmental Disabilities - Protection and Advocacy grant funds . . . for a subrecipient grant project in accordance with 45 C.F.R. Part 1386. However, due to the subrecipient's inability to perform on the project contract before the end of the two year liquidation period the [State] department expended the remaining contract balance totaling \$5,505.00 for a revised project. The revised project differed significantly in scope from the original project which obligated the 1983 grant funds and therefore constitutes a re-obligation of grant funds beyond the allowable period indicated in 45 C.F.R. Part 1386. We question the [State] department's expenditure of \$5,505.00 for the revised project in violation of the obligation requirements of 45 C.F.R. Part 1386.2/

Agency's Ex. 1, p. 58.

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2/The Board questioned what legal authority required the state to obligate funds awarded in fiscal year 1983 in that same fiscal year, since 45 C.F.R. 1386.2(a), which codified the requirement, was not published until 1984. The Agency later adequately clarified the statutory authority which resulted in the codification of 45 C.F.R. 1386.2(a). See Agency's September 1, 1988 submission. In any event, the State did not contest when the funds had to be obligated.

Consequently, the Agency disallowed the expenditure questioned by the State auditor.<sup>3/</sup>

Discussion

The issue before the Board is whether the funds in question were expended, within the allowable time period, for the purpose for which they were obligated. It is undisputed that the period of obligation for 1982-83 fiscal year funds ended on September 30, 1983, and, even if the performance period extended beyond that time, any re-obligation of grant funds after September 30, 1983 would not be permitted.

The original subgrant with ECLS stated:

Changes in this Performance Agreement may be made upon mutual written agreement between the [State] and the Provider. Such changes shall be incorporated in written amendments to the Performance Agreement.

State's brief, p. 1; State's Att. 3.

The State argued that since the original performance agreement allowed for revision of the scope of the services, the changes made did not violate any grant requirements. Moreover, the State maintained that its July 25, 1985 Memorandum of Agreement with LSNC, which transferred the subgrant from ECLS, was "just such a written amendment" to the original subgrant agreement. State's brief, p. 1. Having concluded that its July 25, 1985 Memorandum of Agreement was an amendment, the State asserted that the funds were timely obligated in September 1983; that only an amendment to the original subgrant was executed in July 1985, which did not transfer the grant; and, finally, that the performance under the subgrant was completed by September 30, 1985, which was

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<sup>3/</sup>While the State addressed in its appeal brief the auditor's additional recommendation that procedures be established to initiate investigation of non-performance on subrecipient contracts in a timely manner, this issue is not properly before the Board. Therefore, we do not address it.

the end of the allowable 24-month period for completion of all performance under the original subgrant.<sup>4/</sup>

While conceding that the original subgrant was timely obligated, the Agency maintained that the July 25, 1985 Memorandum of Agreement between the State and LSNC, which transferred the subgrant from ECLS, was a re-obligation, i.e., a new subgrant. To support its position, the Agency asserted that aside from the fact that LSNC was never a party to the original subgrant, there was a drastic change in the purposes for which the federal funds were to be used. Agency's brief, p. 4. The Agency argued that the original project was directed at families with disabled children in one county; the revised project, a conference, focused on people with mental illness and developmental disabilities throughout the state, a much broader population. Moreover, the Agency contended that the original project was intended to attempt specific outreach efforts to poor, black families. Conversely, the conference, whose participants were mostly professionals, was intended to serve the much more diffuse purpose of encouraging interest in the long-term pursuit of strategies to benefit the mentally ill and developmentally disabled. Id.<sup>5/</sup>

In support of its position, the Agency referred to the "Principles of Federal Appropriations Law" published by the United States General Accounting Office (GAO manual). The foreword to the GAO manual states that it is designed

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<sup>4/</sup>The State also argued that ECLS, the original subgrantee, is part of the same entity as CLA, the organization that held the conference, and, therefore, the State did not consider the revision of the subgrant as transferring the original subgrant to another subgrantee. Since we find that the change in the scope of the subgrant created a new obligation, we do not need to reach this argument. We note, however, that the record is more consistent with the view that ECLS and CLA were legally separate entities, both of which received some funding and services from LSNC, a different legal entity.

<sup>5/</sup>The Agency also argued that because the conference was held on the September 30, 1985, the last date on which the 1983 fiscal year funds could be expended, this suggests a deliberate effort to spend the funds on a single event. The mere attempt to comply with the requirement to timely expend funds, however, does not necessarily mean that the funds were not timely obligated.

"to present a comprehensive treatment of the body of law governing the expenditure of Federal funds." While the GAO manual is only a general guide, it does provide references to decisions rendered by the Comptroller General of the United States and the courts. These decisions provide guidance concerning the standard to be applied in determining whether funds have been properly obligated from a federal appropriation. The State did not challenge the applicability of this guidance here, and we find it is relevant since the obligation requirement arises from federal appropriation restrictions.

The Comptroller General decision at 58 Comp. Gen. 676 (1979) thus provides the framework, and a standard, that is applicable to the case at issue. The issue before the Comptroller General was whether a proposed modification of the geographical area, from which project enrollees were recruited, would change the scope of a previously awarded Action grant so as to create a new grant. In concluding that the precise geographic boundaries would not appear to be a material aspect of the grant - one upon which approval or disapproval depended - the Comptroller General discussed both the general rule and the applicable standards for grant amendments. In summarizing the established general rule, the Comptroller General said:

It is well established that agencies have no authority to amend grants so as to change their scope after the appropriations under which they have been made have ceased to be available for obligation. . . . The substitution of one grant for another extinguishes the old obligation and creates a new one.

58 Comp. Gen. at 678 citing 57 Comp. Gen. 459, 460 (1978).

Further, the Comptroller General said:

~~The~~ execution of a grant based upon a proposal containing specific objectives, research methods to be followed, and estimates of project costs would ordinarily give rise to a definite and maximum obligation of the United States. To enlarge such a grant beyond the scope of the original is to create an additional obligation and must be considered as giving rise to a new grant.

Id., citing 39 Comp. Gen. 296, 298 (1959).

Moreover, the Comptroller General stated that in some cases even a shift in the community served by a grant may alter the scope of the grant. The Comptroller General identified three areas of concern when dealing with the question of changes in grants:

- (1) whether a bona fide need for the grant project continues;
- (2) whether the purpose of the grant will remain the same; and
- (3) whether the revised grant will have the same scope as the original grant.

58 Comp. Gen. at 680.

Further, in consideration of these areas, the Comptroller General said:

The scope of a grant grows out of the grant purposes. These purposes must be referred to in order to identify those aspects of a grant that make up the substantial and material features of a particular grant which in turn fix the scope of the Government's obligation.

58 Comp. Gen. at 681 (emphasis added).

In this case, we examine the same areas of concern. It is undisputed that the need for the original project continued. Therefore, our focus is on the purpose and scope of the revised subgrant.

Based on the evidence in this case, we find that the purpose and scope of the original subgrant were so substantially and materially changed by the revised subgrant that it created a new obligation. The objectives in the original subgrant, an outreach project for low income black families in Wilson County, were to develop community awareness about the needs of disabled children and to assist these families to become self advocates.<sup>6/</sup>

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<sup>6/</sup>It was the State's responsibility to monitor its subgrantee to assure the proper implementation of the project. The Board has previously said that a "grantee, not the subgrantee, is solely accountable to the awarding agency for the use of funds." Pennsylvania College of Podiatric Medicine, DGAB No. 299 (1982).

The project aim was to create a family support network in the community in order to overcome perceived difficulties in providing legal and other services to disabled children. State's Att. 1. Clearly, the revised project's goal "to host a conference on community services . . . to discuss and plan for a means of meeting the overwhelming need for additional community services for people with mental disabilities" in the state, cannot be said to fit within the established purpose of the original subgrant. Further, we agree with the Agency that the scope of the amended project so completely changed the targeted disabled population, the geographical area, and, indeed, even the persons to be trained as advocates that these changes can be viewed only as creating a new obligation.

Although the State argued, summarily, that at one point the original subgrant had contemplated hosting a conference, a conference within the original subgrant would not have been of such a general nature as the one held. The original project proposal called for a community-wide hearing "to share findings based on the local data" collected in the first six months of the project. State's Att. 3. This hearing was to "present and seek information about legal rights and responsibilities, the problems of families with exceptional minority children, and attempt to give birth to an ongoing community support group for these families," providing them with information about specific services available in the area. *Id.* Any conference held within the original subgrant would have included more of the low income black families with developmentally disabled children that was the original focus, and provided them with specific information and help relevant to their problems. The conference contemplated by the revised project represented a material change and created a new subgrant, which we find that the State did in this case beyond the end of the permissible obligation period.

Moreover, we are not convinced that the performance agreement, and therefore the availability of grant funds, was properly extended to September 30, 1985. While the original subgrant covered the period September 30, 1983 to September 30, 1984, an amendment to the original subgrant, signed by ECLS and the State, extended the period of performance only to June 30, 1985. In its cover letter to its August 31, 1988 submission, the State said only that "the date of the end of the extension period granted to ECLS was June 30 because of the concern about their previous lack of sufficient progress." The effect of this, however, is that the subgrant to ECLS had expired



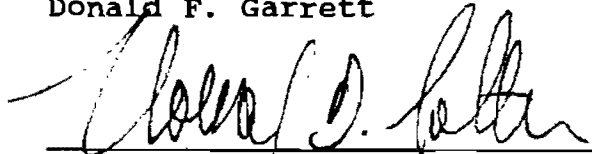
before the agreements allegedly transferring the subgrant from ECLS to LSNC were entered into in July 1985. In our view, this further supports the conclusion that what occurred was not simply a permissible amendment to an existing subgrant, but, rather, the award of a new subgrant amounting to an untimely reobligation of funds.

Finally, we note that the mere fact that the original subgrant provided that changes could be made to the performance agreement by written amendments does not mean that the changes here were within the scope of the original subgrant. To read such a provision as expanding the scope of the original project to encompass any change, no matter how substantial or material, would render the obligation requirement meaningless.

Conclusion

Based on the foregoing, we uphold the Agency's disallowance.

  
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Donald F. Garrett

  
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Norval D. (John) Settle

  
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Judith A. Ballard  
Presiding Board Member