

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Sumter County Opportunity, Inc.
York, Alabama
Docket No. 78-112
Decision No. 112

DATE: July 16, 1980

DECISION

On September 15, 1978, Sumter County Opportunity, Inc. (Grantee) submitted an application for review of an adverse determination dated August 28, 1978, signed by the Deputy Director, Grants Administration Division, Office of Human Development Services (OHDS), Region IV, and the Acting Head, Children, Youth and Families Unit, OHDS, involving two actions, one concerning \$31,257, the other concerning \$15,256, related to the Head Start program during 1973 and 1975 under Grant No. 3333. In response to a letter from the Board's Executive Secretary dated November 3, 1978, the Director of Sumter County Opportunity Inc. submitted supplementary documentation on November 13, 1978. After preliminary analysis of the case, the Board's Executive Secretary wrote to the parties on December 22, 1978 asking for a description of the sequence of relevant events and certain specified documentation. The Grantee responded on January 19, 1979, and the Regional Office responded on March 12, 1979. The Board's Executive Secretary requested the Agency to respond to the appeal on June 29, 1979. On July 24, 1979, the Agency responded and noted that OHDS had approved the Grantee's request for relief as to the \$31,257 in question. Therefore, only \$15,256, representing an over-expenditure in the Grantee's program year (PY) "G" (May 1, 1973 - April 30, 1974), remains in dispute. In response to an Order to Develop the Record dated May 13, 1980, both parties submitted additional information pertaining to positive fund balances at the end of grant periods surrounding the period in question.

Statement of the Case

The notification of disallowance does not set forth the reasons for the disallowance in detail but merely refers the Grantee to past discussions and "Amendment Number '0', Grant Number 3333-L." Amendment "0" states that the \$15,256 over-expenditure "must be paid from non-federal (cash)." An earlier communication from the Region stated that the "excess expenditure [could not] be charged against federal funds in any other period" but had to be paid from non-federal sources.

The audit report for the period in question (Audit Control No. 04-56485) states that during PY "G", federal contributions totaled \$556,546 for the grantee's Head Start Full Year/ Part Day program, serving 463 children. The Schedule of Budgeted, Incurred, and Questioned Costs contained in the audit report shows that the grantee spent \$367 more than the amount of federal funds budgeted in the "personnel" category, \$2,400 in the "consultants and contract services" category, \$1,915 in the "travel" category, \$4,137 in the "space costs and rentals" category and \$13,916 in the "consumable supplies" category for a total of \$22,735 in over-expenditures. The Grantee spent \$3,381 less than the amount of federal funds budgeted in two other categories, and it applied to the program \$1,848 in Head Start fee income and \$2,250 in state funds. After subtracting the \$3,381 and the fee and state income, there were \$15,256 in over-expenditures.

The audit report indicates that the costs over budget may have been incurred because the Grantee operated the program for 48 weeks, having received permission from the OHDS Community Representative to do so, while the approved budget anticipated operation of only a 44-week program.

According to the Regional Office, the Grantee has discontinued program operations prior to the end of the program year three times in four years due to a shortage of funds. A special condition was attached to the grant for PY "L" requiring the Grantee to submit a detailed plan to assure the Region that operations would not be interrupted because of a shortage of funds. The Regional Office also stated that the Grantee has one of the highest cost per child per year figures in the Region, which makes the program an unlikely candidate for increased funding beyond cost of living increases. These statements have not been disputed by the Grantee.

Grantee's Argument

The Grantee admits that there was an over-expenditure of federal funds and states that the funds were spent in the form of accumulated fund balances over several years. It states that it has requested that the over-expenditure be charged against "future program fund balances."

Discussion

The Statement of Changes in Fund Balance in the audit report indicates that the Grantee had a positive fund balance of \$11,379 on hand at the beginning of the program year in question. This amount appears to be made up of non-federal funds. The auditors, therefore, indicate that there was a negative fund balance of \$3,877 at the end of the year (\$15,256-\$11,379).

The Agency has asserted, without refutation by the Grantee, that the Grantee suffered from a shortage of funds and had to discontinue program operations prior to the end of the program year three times in four years. The Grantee has indicated, by the submission of Statements from six audit reports, however, that it had accumulated fund balances in several years that range from \$206 to \$26,780. The Order to Develop the Record noted that if in fact the Grantee had unexpended funds under any grant, and some of the costs which contributed to the over-expenditure in question here were allocable to that grant, then it is possible that all or part of the over-expenditure is properly chargeable to that grant. The Grantee did not provide any information that could lead the Board to a determination that any of the costs in question could be allocable to another grant year.

Since we must determine that the excess costs were not allocable to grants for which there were unexpended funds, the Grantee's arguments do not appear to furnish the Board with any other substantial reason upon which to base a decision in its favor.

The amount of federal funds to be made available to the Grantee for the budget year in question is clearly set forth in the notice of grant award issued by the Agency. We are aware of nothing in the notice of grant award or elsewhere which could reasonably have led the Grantee to believe that any additional funds would be made available.

Even if this Board found in favor of the Grantee, there is no relief that the Board could appropriately grant. The authorization requested is a discretionary one for the Regional Office to make. (Cf. Sencland Community Action, Inc., DGAB Docket No. 24, Decision No. 21, June 25, 1976). This Board will not engage in grant administration by authorizing the use of future under-expenditures to cover past over-expenditures, at least in the absence of a showing that the administering officials arbitrarily refused to allow such a set-off. (Cf. Community Action Agency of Memphis and Shelby County, DGAB Docket No. 76-9, Decision No. 38, July 5, 1977.) No such showing has been made.

It appears that the Grantee has made a request for such authorization to the Regional Office, and it has been rejected. The Regional Office asserted in its response to the appeal that, in light of the Grantee's history, this action was not an arbitrary one. We agree. Since the Grantee has a history of discontinuing its operations before its school year has ended, it seems that by granting its request, the Regional Office would merely increase the likelihood that the current program would not operate for the full year. As a matter of grants administration, it would make little sense to allow a grantee to use current grant funds to pay old expenses when it has had difficulty operating within its budget for prior years.

In addition, forgiveness of the over-expenditure is not a form of relief within the Board's authority. The forgiveness of an over-expenditure would be tantamount to the awarding of a supplemental award. The Board is not vested with the authority to make an award of grant funds. (Pinellas

Opportunity Council, Inc., DGAB Docket No. 79-58, Decision No. 80, February 6, 1980; Macon County Community Action Committee, Inc., DGAB Docket No. 78-7, Decision No. 92, April 29, 1980; Anderson-Oconee Headstart, Inc., DGAB Docket No. 79-80, Decision No. 90, April 28, 1980.)

In response to the Grantee's appeal, the Agency has taken the position that the excess costs issue is not subject to the Board's jurisdiction.

The Board's decisions holding that it does not have authority to award supplemental funds have viewed this issue, however, as a matter of remedy, not of jurisdiction. The OHDS notification in this case identified the \$15,256 as costs "not allowable", and informed the grantee of its right to appeal to the Board. Under 45 CFR 16.5(a)(2), the Board has jurisdiction over a determination that a cost not allowable under the grant has been charged to the grant. Although the Grantee has admitted here that it did over-expend and requests a remedy which the Board has determined it is unable to grant under the circumstances presented here, this does not deprive the Board of jurisdiction. Accordingly, the Agency's motion to dismiss the appeal for lack of jurisdiction is denied.

Conclusion

For the reasons stated above, the appeal is denied.

/s/ Clarence M. Coster

/s/ Donald G. Przybylinski

/s/ Frank L. Dell'Acqua, Panel Chairman