

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health and Human Services

SUBJECT: Massachusetts Rehabilitation Commission
Docket No. 79-190
Decision No. 122

DATE:
September 30, 1980

DECISION

Introduction

This case involves a determination by the Principal Regional Official (PRO), Region I, that an indirect cost rate should not have been used to allocate the costs of operating the Massachusetts Rehabilitation Commission's Central Departmental Administration (CDA), which serves its Vocational Rehabilitation (VR) and Disability Determination (DD) programs, because the costs were charged as direct costs of the VR program. Both programs are federally funded.

The notification letter, dated August 13, 1979, stated that the use of an indirect cost rate to allocate CDA costs to DD resulted in a duplication of charges against the federal government and contravened federal regulations which provide that to be allowable under a grant program, "costs must not be allocable to or included as a cost of any other federally financed program." The determination affirmed a May 14, 1979 decision of the Division of Cost Allocation regarding the use of the indirect cost rate.

This decision is based on the application for review, the Agency's response, information provided in several telephone conferences and the parties' responses to the Board's Order to Show Cause.

Statement of the Case

The Massachusetts Rehabilitation Commission (State), fully federally funded with the exception of the required state match, receives grant funds pursuant to the Rehabilitation Act of 1973 from the Rehabilitation Services Administration (RSA) for its VR program, and has a contract with the Social Security Administration to perform disability determinations as part of the DD program. A central departmental office (CDA) was set up to provide centralized services for the two programs as a cost saving measure. CDA expenses and salaries were charged in total as a direct cost to the VR account, though CDA staff also performed services on behalf of DD. Fixed indirect cost rates applicable to DD were established in order to recover the portion of CDA costs allocable to DD. The Agency maintains that the rates were established based on erroneous information supplied by the State to the Regional Office. The Agency claims the State misrepresented that it was not receiving any federal funds from another source for "indirect cost type items." The amount disbursed for indirect costs

under the DD contract to the State is reported by the Agency as \$77,190 (2.98 percent rate) for the period July 1, 1977 to June 30, 1978 and \$76,650 (2.83 percent rate) for the period from July 1, 1978 to June 30, 1979. The Agency seeks to recapture these funds on the basis of 45 CFR Part 74, Appendix C, Section C.1. which states that to be allowable costs must:

- f. Not be allocable to or included as a cost of any other federal program in either the current or a prior period.
- g. Be net of all applicable credits.

The Agency maintains that it has no objection to an allocation of the expenses of operating CDA between the two programs but claims that the method used in this case results in the State receiving reimbursement from two different federal sources.

The Agency claims: "If the state honestly contemplated having the CDA expenses allocated, then it should not have had the federal rehabilitation program pay the full amount. Either the state specifically wanted the federal rehabilitation program to absorb CDA expenses as a direct grant expense or the state intentionally submitted a distorted and false budget accounting." Agency letter of November 28, 1979, p. 6.

In its response to the Board's Order, the Agency objected to the amount of the rates, maintaining that the rates are too high. The Board will not address this argument at this time inasmuch as the Agency's own definition of the fixed rate provides that the rate is not subject to adjustment for the period for which the rate was established. See Agency letter of September 16, 1980. Any Agency plan to adjust the rate at some later date is not at issue in this case.

The State does not dispute that it claimed the CDA expenses as a direct cost of the VR program and as an indirect cost of the DD program. The State maintains, however, that this does not result in a duplication of payment. Rather, according to the State, the use of an indirect cost rate merely allocates CDA costs, initially charged to the VR account, to the proper cost objectives for which services were actually performed. The State explains that these charges to the DD program are then transferred and credited to the VR federal funds expenditure account in order to reimburse VR for the costs of services utilized by DD. See State's response to Order, p. 2. The State maintains that failure to "reimburse" VR would prevent VR from providing the full level of services that were contemplated when the grant funds were initially awarded.

In addition, the State claims that it would be in violation of federal regulations if DD did not reimburse VR for the amount expended to administer DD programs, citing Federal Management Circular (FMC) 74-4, Attachment A,

Section C.2.b. which provides:

Any cost allocable to a particular grant or cost objective under the principles provided for in this circular may not be shifted to other Federal grant programs to fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons. (See also 45 CFR Part 74, Appendix C, Section C.2.b.)

The State argues: "Failure to apply the indirect cost rate as we have calculated it would violate this section of FMC 74-4 as the Disability Determination unit would be shifting some of its administrative costs to the Vocational Rehabilitation program." Application for Review, p. 3.

Analysis

The Board agrees with the Agency's position that the State did not use proper methods for claiming the costs of CDA. The State should not have claimed the total costs of CDA as a direct costs of the VR program if the State intended to allocate these costs between the two programs. By charging the costs to VR and applying the rate to charge DD, the State was in fact claiming twice for the same costs. If, in the future, the State plans for CDA to serve the two programs and have each pay a share of the costs, the State will have to develop a different method of claiming such costs.

The issue before the Board in this case is whether to uphold the disallowance of costs claimed through the indirect cost rate. Had the State used the rate to charge DD for its portion of the CDA expenses and then charged VR only to the extent that DD had not already paid for the costs of operating CDA, the Board would have approved the use of the rate. The Agency correctly argues that the State's practice of claiming the total costs as a direct cost of VR and a portion of the costs as an indirect costs of DD results in claims for more federal funds than the State is entitled to receive for those costs. The problem, however, is not that the State is using a rate to allocate the costs but that the State charged the VR account for costs of services benefiting another program. The State argues that the rate is being used to reimburse VR for funds that it advanced for the payment of DD's share of CDA costs, but such reimbursement would not have been necessary had VR not been charged for the total costs of CDA.

The State does, however, express valid concerns that a program should bear its fair share of costs for services it receives and conversely that a program ought not divert funds intended for its program purposes in order to pay the costs of services benefiting another program.

In addition, if the Board decided to uphold the determination entirely with respect to the rate, the State would receive less than the federal funding to which it is entitled because of the different percentage of federal funding for VR and DD costs. The VR costs are 80 percent federally funded with a 20 percent State match. Although it appears that VR paid the CDA

costs entirely from the federal portion of the budget, in a September 15, 1980 telephone conference both parties agreed that other costs are paid 100 percent from the State portion. Therefore, the State in effect receives only 80 percent federal funding for CDA costs. The DD program receives 100 percent federal reimbursement for its costs. If the State is required to pay the entire costs of CDA from the VR account, it would be disadvantaged to the extent the State is entitled to 100 percent reimbursement for that portion which represents the costs for services to DD.

Conclusion

The Board emphasizes that the State should not continue this method of allocating the costs of CDA between the programs. The Board has fashioned a remedy in this case not to condone the State's actions, but to satisfy requirements set out in federal regulations at 45 CFR Part 74, Appendix C, Section C.1.f. and g., and Section C.2.b. Upholding the State's position entirely would result in violation of the former which prohibits duplicate payments of federal funds for the same costs. Upholding the Agency's position entirely would result in violation of the latter which requires a program receiving federal funds to expend these funds only for costs incurred by that program.

In order to reach a result which is equitable, yet comports with applicable regulations, the Board has decided that the State should be allowed to use the indirect cost rate to establish DD's share of the costs of CDA. Further, DD should reimburse VR for the amounts temporarily advanced to cover those costs. This decision is conditioned on the State's return to the federal RSA account of that portion of VR costs it should not have claimed because they were properly chargeable to the DD account for services rendered to DD. This is to be distinguished from VR simply crediting its federal account in the amount received from DD for its share of CDA costs. The funds should be returned from the same federal account and for the same time period in which they were claimed. This does not preclude the State from making claims against the RSA account for other allowable costs of the VR program during that time period within the statutory limitations.

/s/ Donald G. Przybylinski

/s/ Clarence M. Coster

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