

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Greater Philadelphia Health Action, Inc.  
DATE: December 11, 1996  
Docket No. A-96-126  
Control No. A-03-92-03313  
Decision No. 1605

DECISION

Greater Philadelphia Health Action, Inc. (GPHA) appealed a decision by the Ad Hoc Grant Appeals Review Committee of the Health Resources and Services Administration (HRSA) of the Public Health Service (the PHS review committee). The decision was issued pursuant to 42 C.F.R. Part 50, Subpart D. The decision upheld a determination by HRSA to disallow \$39,577 in federal funds claimed by GPHA for the cost of leased cars for the period June 1, 1990 through May 31, 1991. The disallowance was based on an audit performed by the Office of Inspector General (OIG), Office of Audit Services.

As discussed below, we sustain the PHS review committee decision.

I. Background

GPHA received grants under section 330 of the Public Health Service Act (42 U.S.C. § 254c) to operate a community health center (CHC). CHCs provide designated health services to medically underserved populations identified by the Secretary of the Department of Health and Human Services.

GPHA began receiving section 330 funding in 1979. During the time period of the audit, it operated four CHC medical clinics in Philadelphia. In addition to the medical clinics, GPHA also operated two school-based clinics, an alcohol counseling treatment program, and a day care center. The section 330 Notice of Grant Award for FY91 (June 1, 1990 to May 31, 1991) approved a GPHA budget totalling \$5,210,306, of which \$3,236,788 was the federal share.

The OIG audited costs claimed by GPHA under section 330 for FY91. The stated purpose of the audit was to determine whether "the costs incurred by GPHA during that period were allowable, allocable and reasonable under Office of Management and Budget Circular A-122." I.G. Audit, PHS Ex. 2, at 1.

In the audit, the OIG identified \$462,011 in questioned costs. These consisted of (1) \$383,414 in costs which were not approved in advance by PHS and (2) \$78,597 in costs that were questioned primarily because they were not reasonable. PHS Ex. 2, at 4. The unapproved expenditures concerned expenditures associated with the school-based program, the day care center, and the lease of a parking lot. The expenditures which were questioned as unreasonable related to cars that were leased for GPHA's senior management; penalties for late payments on computer lease, IRS interest, City of Philadelphia wage tax interest, and bank charges; expenses related to employee parties; and reimbursement for meals purchased by the Executive Director. The only costs which remain at issue in this appeal are the car leasing costs.

The audit questioned \$49,327 GPHA spent to lease cars for the Executive Director, Medical Director, Medical Records Director, Finance Director, and the Operations Director.<sup>1</sup>

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<sup>1</sup> The \$49,327 in costs consisted of:

- o \$26,268 for the actual lease obligation for the cars assigned to the five employees;
- o \$237 for registration renewal on the cars;
- o \$466 to the leasing company for late payment charges on the lease payments;
- o \$2,067 for settlement costs associated with excess mileage and minor repairs for two of the leased cars;
- o \$14,797 for insurance costs associated with the leased cars;
- o \$3,838 for the cost of car phones installed in two of the leased cars;
- o \$403 for mileage costs for "out of town travel" reimbursed to three individuals with leased

(continued...)

The cars were an Accura Legend, a SAAB, a Nissan Stanza, a Honda Accord, and a Toyota Supra. The agreement GPHA had with each employee for the use of the leased car stated that the "employee shall have the right to use the acquired property while employee is employed by employer." PHS Ex. 2, at 7. GPHA had no way to ascertain the extent to which the cars were used for business purposes as opposed to non-business purposes. Rather, GPHA regarded provision of these cars as "part of the benefit package it offers its senior management" (PHS Ex. 4, at 4) and assumed the cars would be used for non-business purposes as well as business purposes.

The OIG's findings were reviewed by HRSA. Based on additional information submitted by GPHA, HRSA disallowed \$280,311 of the \$462,011 which the auditors recommended be disallowed. PHS Ex. 3. HRSA made the following adjustment to the car leasing costs. While the OIG had recommended that all of the costs of leasing the cars be disallowed, HRSA determined that it was appropriate to allow GPHA credit for reasonable transportation expenses for its senior staff. HRSA used the current federal reimbursement rate for official business travel of 25 cents per mile. Pursuant to this standard it calculated a reasonable travel expense as follows:

Average round trip from GPHA to a satellite health center	30 miles
1 round trip per day x 5 senior staff - 5 x 30 miles =	150 miles
150 x 25 cents per mile =	\$37.50/day
\$37.50 x 5 =	\$187.50/week
\$187.50 x 52 =	\$9,750/year

HRSA subtracted \$9,750 from the questioned leasing costs of \$49,327 and determined that the difference of \$39,577 was unallowable.

GPHA appealed HRSA's decision to the PHS review committee. PHS Ex. 4. The committee affirmed HRSA's decision to disallow \$39,577 in car leasing costs as an unreasonable expenditure of federal funds. PHS review committee decision of April 5, 1996, as amended May 2,

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<sup>1</sup>(...continued)  
cars;

o \$1,251 for the cost of repairs to one of the leased cars.

PHS Ex. 2, at 7-8.

1996 and July 17, 1996. The committee reversed HRSA's disallowance of \$240,734 for the school based health clinic, the leased parking lot, employee parties, and executive meal expenses.

## II. Applicable Authority

Federal funds which are administered by non-federal organizations are subject to federal cost principles. Cost principles identify types of allowable and unallowable costs and also set forth general principles for determining allowability of costs. This Board has long held that a grantee of federal funds bears the burden of documenting the allowability of costs charged to federal funds. See, e.g., Rio Bravo Association, DAB No. 1161 (1990); Ohio Dept. of Human Services, DAB No. 858 (1987).

Cost principles for non-profit organizations receiving federal funds are set forth in Office of Management and Budget Circular A-122 (OMB A-122). For the time period at issue, OMB A-122 was made applicable to Department of Health and Human Services grants to non-profit organizations by 45 C.F.R. § 74.174. Also, 42 C.F.R. § 51c.107(a) specifically provided that section 330 grants were subject to the cost principles set forth in 45 C.F.R. § 74, subpart Q, which included 45 C.F.R. § 74.174.

As to what types of costs should be considered "reasonable costs," Attachment (Att.) A of OMB A-122 provides, in relevant part:

### A. Basic Considerations

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2. Factors affecting allowability of costs. To be allowable under an award, costs must meet the following general criteria:

a. Be reasonable for the performance of the award and be allocable thereto under these principles.

\* \* \*

3. Reasonable costs. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of the

reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.

Grantees are required under 45 C.F.R. Part 74 to maintain accurate records of the source and application of funds for all grant-related activities and have available source documentation to support these accounting records. 45 C.F.R. § 74.61(b) and (g).

### III. Analysis

HRSA recognized that the GPHA senior managers were required to engage in local travel, principally between GPHA clinics, and that reimbursement for such travel was an allowable cost. However, the issue in this case is whether the method that GPHA used to fund that travel -- leasing of cars for both business and private use for its five senior managers -- resulted in "reasonable costs" as that term is defined in OMB A-122, Att. A, ¶ A.2 and 3.

As noted above, OMB A-122 provides that a cost is reasonable if "in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost." OMB A-122, Att. A, ¶ A.3. We agree with the OIG and the PHS review committee that the expenditure of \$49,327 in one year to fund the inter-city travel of five managers exceeds what would be incurred by a prudent person responsible for running a non-profit health services organization for medically underserved people. We base this conclusion on three considerations: the amount of the expenditure; the fact that these cars were provided for the personal use of the senior managers; and the fact that GPHA offered no persuasive explanation or documentation to justify this expenditure or arrangement with its senior managers. Below we discuss each of these considerations.

GPHA expended \$9,847 per manager (\$49,327 divided by 5) for the inter-city travel of its five senior managers. While this amount in itself appears unreasonable for one person's inter-city travel for a year, the OIG audit and

the HRSA decision place this amount in perspective by reviewing it in relation to the federal mileage rate of 25 cents a mile.<sup>2</sup> This comparison clearly illustrates the excessive nature of the expense and that these leasing costs were not "of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award" as required by OMB A-122, Att. A, ¶ A.3.a.

The OIG audit observed that, at the federal mileage rate, the GPHA expenditure equates to reimbursing its managers for 197,308 miles of local travel in a one-year period. PHS Ex. 2, at 14. The OIG then assumed a round trip from GPHA to its clinics to be 20 miles and found that the managers would have had to have made 9,865 round trips in the one-year period to justify this expenditure. *Id.* This would constitute 1,973 trips per manager.

Subsequently, HRSA calculated a reasonable travel expenditure by assuming that each manager made one round trip a day at 30 miles a trip. Using this assumption, HRSA concluded that GPHA should have spent a total of \$9,750, rather than \$49,327, to compensate its managers for their inter-city travel. PHS Ex. 3, at 6. While GPHA listed various types of meetings attended by its senior managers, it offered no evidence which would establish that HRSA's average daily mileage assumption was erroneous. PHS Ex. 4, at 4.

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<sup>2</sup> We note that in its appeal to the PHS review committee, GPHA objected to the use of the federal mileage rate as a measure of reasonableness for travel reimbursement. GPHA argued that federal grantees are not required to use the federal mileage standard and that other standards "are appropriate and can apply to form the basis of what is allowable and reasonable." PHS Ex. 4, at 6. GPHA also argued that it was inappropriate to compare mileage reimbursement with leasing costs and that GPHA did not reimburse its managers for gas. *Id.* While we agree that other standards could be appropriate, GPHA presented no other standards -- either mileage or leasing arrangements -- for consideration by the Board. Therefore, in the absence of any other evidence concerning appropriate measures for travel reimbursement, we rely on the federal mileage standard which is widely used and periodically updated. We note that GPHA did not represent that it had adopted a different mileage standard for reimbursing travel by its employees who did not have leased cars.

Further, the terms under which these cars were provided to the senior managers call into question the reasonableness of the costs. GPHA frankly admitted that it did not distinguish between personal use of these cars and business use. The cars, which were all upscale makes and models and two of which had car phones, were provided to the managers for business and non-business use so long as they were employed at GPHA. PHS Ex. 2, at 7. GPHA's failure to restrict the use of these cars to business use or to recover the value of the non-business use of the cars inflated its transportation costs and made them not "of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award" as required by OMB A-122, Att. A, ¶ A.3.a.

GPHA argued that the leasing costs were reasonable because provision of the cars was part of the managers' benefit package and not simply a transportation cost.<sup>3</sup> GPHA asserted that --

such costs [should] be judged as part of the complete compensation package for each position, rather than be considered in isolation against a standard that allows only business usage. . . . We believe the comparison of GPHA compensation with other similar organizations in the area will demonstrate that such costs are reasonable.

PHS Ex. 4, at 3.

This argument is unpersuasive for the following reasons. The record contains no evidence concerning GPHA's managers' "complete compensation package" or the compensation packages of "other similar organizations in the area." Therefore, from the record, we cannot determine what the GPHA managers were paid in cash or in other in-kind benefits, nor can we compare that compensation with that of similarly situated managers in the Philadelphia area. Consequently, it is impossible to determine whether part of the cost of providing cars to GPHA's senior managers could be considered a reasonable

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<sup>3</sup> In the proceeding before the Board, GPHA filed only a two-page letter which briefly summarized its prior arguments to the auditors, HRSA, and the PHS review committee. GPHA's most complete presentation of its arguments is contained in GPHA's appeal to the PHS review committee. See PHS Exs. 4 and 6. In the remainder of the decision, we consider these arguments and explain why we do not find any of them persuasive.

personnel cost as opposed to a transportation cost.<sup>4</sup> Since the grantee bears the burden of documenting the allowability of costs charged to federal funds, this complete lack of evidence means that GPHA has failed to demonstrate that any portion of these costs should be considered a reasonable personnel expenditure.

Further, GPHA failed to cooperate with the PHS review committee's apparent attempt to develop information as to whether the leasing costs could be considered a reasonable personnel expenditure. In reviewing the car leasing costs, the PHS review committee explicitly asked GPHA for the managers' "employment contracts and Wage and Tax Statements [W2s] reflecting total employment arrangements . . . ." PHS Ex. 5. GPHA responded to the letter but did not acknowledge this portion of the committee's request and did not supply the requested documents. PHS Ex. 6. Instead, GPHA referred to its prior arguments and attached a letter from the Chairperson of the Board of Directors stating that it had been GPHA's historic practice to provide such cars. Since GPHA failed to produce the relevant evidence even when requested, it is particularly appropriate that GPHA bear the consequence of the lack of evidence in the record.

Finally, if GPHA was treating the non-business use of these cars as part of the managers' compensation, the value of that use should have been reported on the managers' W2s. As noted, GPHA declined to provide the W2s even when requested. If GPHA did not report the value of these benefits to the Internal Revenue Service as compensation, this would further undermine its position here that the non-business use of the cars actually was part of the managers' compensation.

GPHA also argued that it was necessary to lease cars because "secure parking arrangements would be difficult to obtain locally and . . . be cumbersome and expensive" and that allowance of the cars to the senior management was "made after proper consideration of various alternative approaches." PHS Ex. 4, at 4. This argument is unpersuasive because GPHA's representation is again completely unsupported by evidence in the record. Therefore, there is no way to judge the difficulty of

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<sup>4</sup> Because we conclude that the record does not support a finding that these costs were part of GPHA's personnel costs, we do not reach the issue of whether provision of cars to employees for personal use could be a reasonable personnel cost under OMB A-122.



arranging secure parking, no way to review the "various alternative approaches" considered by GPHA, and no way to determine whether GPHA's ultimate decision on this issue was reasonable.

GPHA argued that leasing cars was not contrary to the terms and conditions of its grant award. PHS Ex. 4, at 5. GPHA stated that "[w]e contend that the existing regulations do not address this matter. We can only conclude that such arrangements are not prohibited and are therefore allowable." Id.

We reject this argument for the following reasons. First, the cost principles cannot address every conceivable expenditure an organization can make. The absence of a prohibition or limitation on the allowability of a specific type of cost does not mean that the cost is necessarily allowable. Rather, general principles, such as whether a cost is reasonable, may determine whether a cost is allowable. Second, with this argument, GPHA misconstrues the basis for the PHS review committee decision and this decision. The problem is not that leasing costs, in and of themselves, violate any term or condition of GPHA's section 330 grant. The problem is that the costs incurred for local transportation exceeded that which would be incurred by a prudent person and were not "of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award . . . ." OMB A-122, Att. A, ¶ A.3.a. Therefore, these costs are being disallowed because they were not "reasonable costs" as defined by OMB A-122, Att. A, ¶ A.3.

Finally, GPHA argued that the cars were used for business purposes other than travel between health centers. It cited entries from personal calendars indicating that these managers had attended various other types of meetings. PHS Ex. 4, at 4. GPHA also mentioned that it did not reimburse the managers for fuel costs associated with business travel (PHS Ex. 4, at 6) and that some trips were made outside Philadelphia. PHS Ex. 4, at 3. GPHA asked that these additional costs be considered in calculating reasonable transportation costs.

We reject this request because it is not supported by any evidence that would provide a basis for adjusting the assumptions made by HRSA in allowing \$9,750 in travel costs. HRSA assumed 30 miles of travel per work day per manager. This may have been a generous assumption since it was not adjusted for holidays, vacation, sick days or days for which travel was unnecessary. If the assumption was unfair because each of the five GPHA managers

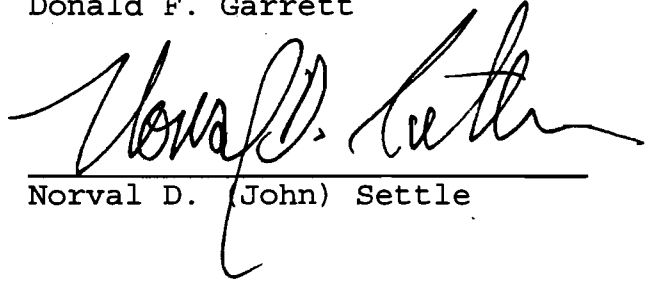
averaged more than 30 miles of travel a day on business, GPHA could have easily demonstrated this fact using evidence such as a representative sample of the managers' travel obligations from their personal calendars. Since it failed to do this, we must assume that, over a year's time for all five managers, the 30 mile per day assumption provided a fair basis for calculating reasonable transportation expenses.

Conclusion

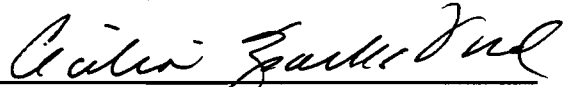
Based on the foregoing analysis, we uphold the disallowance of \$39,577.



Donald F. Garrett



Norval D. (John) Settle



Cecilia Sparks Ford  
Presiding Board Member