

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: State of Texas  
Governor's Committee on Aging  
Docket No. 78-37  
Decision No. 59

DATE: JUN. 20, 1979

DECISION

I. FACTS

This case involves an appeal by the Texas Governor's Committee on Aging (grantee) of the termination of a grant awarded by the Administration on Aging (AoA) for a Nursing Home Ombudsman Program. The grant amounted to \$30,810 for the year ending September 30, 1978. By letter dated May 8, 1978, the Commissioner on Aging notified the grantee that the grant would be terminated effective April 30, 1978 for failure to comply with the terms and conditions under which it was made.

The termination followed a long period of negotiations between AoA and the grantee about the type of activities to be financed by the grant. The grant was made under Section 308 of the Older Americans Act of 1965 (42 U.S.C. 3028) to "enable State agencies on aging and other public and private nonprofit organizations to assist in the promotion and development of ombudsman services for residents of nursing homes." It was the third such grant awarded to the grantee by AoA, the first having been for the year ending June 30, 1976.

The grantee carried out all of its activities for the program through a contract with the State Bar of Texas. Under that contract, the Bar employed an Ombudsman Developmental Specialist who was charged with accomplishing the grant purposes. By the end of the first year, AoA objected that the project was not focusing on an advocacy program for nursing home patients but instead was directed toward the much broader problem of legal services for the elderly, including elderly who were not in nursing homes.

The differences widened between AoA and the grantee over the type of activities to be undertaken and the issue was drawn clearly by the program report which the grantee submitted with its application for funds for the fiscal year ending September 30, 1978. In approving that application, AoA imposed the following condition:

The report for last year indicates that the Nursing Home Ombudsman Developmental Specialist partially fulfilled the objectives of the program in visiting and working with Area

Agencies on Aging, but was focused on "primary legal problems facing the area residents of nursing homes" and other legal issues. Discussions between the Commissioner and the Director of the State Agency on Aging clearly separated the legal services and ombudsman developmental functions. The grant is based on the latter functions.

To this end it is necessary that the State Agency on Aging submit within 45 days of receipt of this grant notice a work plan for 1978 outlining specific action steps and dates for their accomplishment in carrying out the developmental specialist functions on behalf of nursing home residents per AoA TAM 76-24.

This condition was intended to ensure that the grant resources would be used only for developmental activities in the nursing home ombudsman program. AoA TAM 76-24 provided general guidelines for such a program, the objectives of which were summarized in section VI, paragraph 8 as follows:

All of these recommended actions add up to this:  
We are urging the State agencies on Aging to provide the leadership, through the Ombudsman Developmental Specialist, in inaugurating, in as many areas as possible, a community action program dedicated to identifying and dealing with the complaints of older persons, or their relatives, relative to the operation of nursing homes. The success of this effort in the first year will be judged solely on the basis of the number of community action programs that are launched and the effectiveness of these programs in receiving complaints and then resolving them in an effective and constructive manner.

The grants under the ombudsman program were not intended to cover the costs of achieving these objectives. The grants ranged from \$18,000 to less than \$60,000 per State per year and those to Texas were \$30,810 per year. These grants were intended to pay, or help pay, for the cost of having what section III of AoA TAM 76-24 refers to as an "Ombudsman Developmental Specialist" on the State agency level. That specialist was to "be responsible for providing overall leadership in planning and service areas but should not be involved in directly providing services to patients or handling complaints."

The planning and service areas at the local level were directed by Area Agencies on Aging (AAA) which were financed by other funds. It was these agencies which were to arrange for the community action programs designed to provide the actual services in nursing homes.

In February 1978 the grantee submitted a work plan which AoA rejected as not complying with the condition it had imposed. The plan's approach was to make the services of the Ombudsman Developmental Specialist available to such AAA's as might express interest; there was no provision for activities to stimulate interest on the local level. Negotiations ensued and AoA suggested a work plan under which immediate steps would be taken to initiate the program in the 28 areas of the State which operated under an AAA. AoA asked that the State make \$5,000 of funds from other sources available to each agency to enable it to start the program on a local level.

The grantee's representatives protested that the AoA plan was unrealistic in expecting such a broad implementation of the program, but finally stated they would seek to get State approval of a plan to start the program in 16 areas. On March 15, 1978, however, the grantee submitted a plan similar to the one AoA previously had rejected, except that it modified the plan by making \$5,000 from other funds available to any AAA which would agree to establish a project.

The Commissioner on Aging responded to the March 15 submittal in a letter dated March 31, 1978, which stated in part:

The purpose of this letter is to notify you that the Texas Governor's Committee on Aging has failed to comply with the terms and conditions under which the grant was made for the Texas Nursing Home Ombudsman Program. As has been pointed out previously, this is an advocacy program for nursing home patients. There must be therefore an active effort on the part of the State or its contractor to enlist the involvement of the Area Agencies on Aging and/or other sponsors. It is not sufficient to wait for requests for assistance.

Guidelines and procedures established by the Office of Human Development Services require that you be granted thirty (30) days, from the date of this letter to respond in writing describing the plans you will take to correct the deficiency. If an acceptable plan is not forthcoming, it will be necessary for the Administration on Aging to terminate this grant.

On May 8, 1978, the Commissioner notified the grantee that since it had not responded to the March 31 letter, he was terminating the grant "as of April 30, 1978". He modified the grant award, decreasing it by \$12,834, which was the amount allocable to the period May through September 1978.

## II. Issues

The grantee contends that it applied for the grant with the understanding that it would not be required to achieve "large numerical goals" with the limited funds available. In any event, it claims that it could not promise the number of projects expected by AoA because (1) local agencies could not be forced to participate at a faster pace than they chose, (2) the program was highly dependent upon securing volunteers and (3) the amount of the grant was insufficient to permit coverage of a large State. Also, it contends that the work plan AoA sought would have required an additional expenditure of some \$150,000 which was not contemplated by the grantee when it entered the program. The grantee characterizes this as "in violation of the contractual obligations" it had agreed to accept.

AoA on the other hand characterizes the work plan it presented as a model or sample plan. It denies that it was requiring precise numerical goals; rather it states that it sought to develop an approach designed to stimulate activity at the local level.

## III. Discussion

It is not without reason that AoA felt compelled to impose a condition in the third year to require that the grantee submit a work plan which complied with AoA TAM 76-24 within 45 days. The success of the program was to be measured by the number of community action programs at the local level. These clearly would have to be developed through the AAA or some substitute agency. Yet, the grantee operated for two grant years without asking the AAAs to develop local programs. Those agencies were not solicited until October 1977, the beginning of the third grant year and it was not until February 1978 that the grantee's Ombudsman Developmental Specialist held the first meeting with the director of an AAA to discuss plans for the ombudsman program.

The grantee asserts that its activities in using these grant funds to develop a legal services program the first two years were approved by AoA. It, however, submitted no evidence that AoA had approved the use of the ombudsman program grants for that purpose. The grantee asserts that such approval is contained in a letter from the Commissioner on Aging to the Governor of Texas, undated but stamped received by the grantee August 9, 1976. That letter, however, approved use of a contract between the grantee and the State Bar--

"designed to bring increased awareness of the problems of older persons in nursing homes in Texas and to work toward the amelioration of these problems. The goal of this program is to develop a process at the area or

community level which will be responsive to complaints from residents or relatives of older persons in skilled nursing homes and intermediate care facilities."

A year and a half later not a single local program had begun, nor was it even clear that there was a good prospect that any would be established. Rather than providing support for the grantee's position, the letter indicates that AoA was unduly patient in waiting so long to take definitive action.

The grantee argues that under current AoA regulations there is a "combined nursing home ombudsman base and legal services development base for the newly enacted Older Americans Advocacy Program." That argument is not relevant. We can only consider the program as it existed during the fiscal years ending in 1976, 1977 and 1978. At that time there was a clear intent that the very limited resources which then were available be directed toward the development of local nursing home ombudsman projects.

#### IV. Effective Date of Termination

The grantee also challenges the use of April 30, 1978, as the effective date of the termination. The grantee did not have notice of the termination until it received the May 8, 1978, termination letter. The termination followed a notice of intent to terminate which was dated March 31, 1978, and stated that it would be necessary to terminate the grant if grantee did not respond in writing within 30 days with plans to correct the deficiency. The notice of intent did not state that the termination would be automatically effective at the expiration of that 30-day period. Moreover, the OHD (now OHDS) Grants Administration Manual provides that "[i]f circumstances warrant... termination action may be taken in lieu of a suspension (but after a 30-day period to take corrective action has expired)." We believe this requires the agency to take affirmative action at the end of the 30-day period to advise a grantee whether its grant will be suspended or terminated. We hold, therefore, that the termination could not have been effective prior to May 15, 1978, the date of the receipt by grantee of the May 8, 1978, termination letter.

#### Conclusion

The effective date of the termination is May 15, 1978, the date of the grantee's receipt of the termination letter. The decrease in grant shall be adjusted accordingly; otherwise, the appeal is denied.

/s/ Francis D. DeGeorge

/s/ Thomas Malone

/s/ Erwin Yourman, Panel Chairman