

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: West Virginia Department of Welfare
Docket No. 78-100-WV-HC
Decision No. 69

DATE: October 26, 1979

DECISION

Procedural Background

By letter dated May 25, 1978, the Acting Assistant Director for Financial Management of the Health Care Financing Administration (HCFA) notified the West Virginia Department of Welfare of a disallowance of Federal financial participation (FFP) for costs relating to the development of a Medicaid Management Information System (MMIS) under Title XIX of the Social Security Act, pursuant to an audit by the HEW Region III Audit Agency (Audit Control Number 03-80221). Since there had not been a request for reconsideration before March 6, 1978, the disallowance having been made after that date, the appeal proceeded under 45 CFR Part 16 (1978).

The State Department of Welfare filed an application for review by letter dated June 14, 1978, which was within the 30 days required by 45 CFR 16.6. The State did not submit the required copy of the notice of disallowance with its request but did submit one on July 17, 1978, after the Executive Secretary advised the State on June 30, 1978, of an extension of time to complete its filing. On December 1, 1978, the Executive Secretary requested that a response to the appeal be filed within 30 days by HCFA. On February 5, 1979, in response to a motion for an extension of time for filing a response, an extension was granted, making the response due by February 16, 1979. The HCFA response was submitted on February 15, 1979.

An Order was issued on June 8, 1979 which summarized the facts and issues as they appeared from the file, offered the State an opportunity to identify the respects, if any, in which the summary of facts and issues was materially incomplete or inaccurate and an opportunity to brief any issue in the case, and directed the State to show cause why the Board should not proceed to decision denying the appeal on the ground that the State's payment of the contractor for work not done and its failure to maintain normal and reasonable controls violated the requirements of 45 CFR Part 74, Appendix C, Part I, A.2.a, A.2.b and C.1.a. West Virginia was required to respond to the Order to Show Cause within 30 days. On July 12, 1979, a request for an extension of time for filing its response was granted, making the response due by July 23, 1979. On August 30, 1979, after

receiving no response from the State, a member of the Board staff spoke to the State's attorney who stated that a response would be submitted the next day. No response to the Order to Show Cause has been received from the State. The lack of response alone would be sufficient ground for a ruling against the State. Cf. Del Paso Heights School District, Docket No. 77-22, Decision No. 62, July 3, 1979. We outline, however, the facts and issues as they appear in the file.

Statement of the Case

The disallowance originally was composed of three parts. HCFA found that the State had claimed (1) a 90% Federal reimbursement for payments to a contractor for work never done (\$112,339 - an amount equal to the difference between the FFP that the State actually received and the sum to which it was entitled); (2) a 90% Federal reimbursement for costs for work that had been performed by the contractor on a project that was never totally completed (\$160,773); and (3) 75% FFP for the development of a Request for Proposal (RFP) (\$2,125). The State decided not to appeal the part of the disallowance relating to the development of the RFP, and HCFA has withdrawn the disallowance relating to (2) above because HCFA says it misunderstood the proper application of one of the sections enumerating the prerequisites for receiving FFP for the development of an MMIS. 42 CFR 450.90(b)(1)(ii)(C). The amount of the contract was \$460,270; the contractor completed 69% of the contract work. Therefore, the State was entitled to \$460,270 approved contract price x 69% completion x 90% rate of FFP or \$285,828. Since it was reimbursed \$398,166, it received \$112,339 excess reimbursement, which is the amount in dispute.

According to the Audit Report (Audit Control Number 03-80221), in August 1974, the State advertised for bids by furnishing an RFP approved by the Social and Rehabilitation Service (SRS) to more than 50 prospective contractors. Only two proposals were received by September 20, 1974, the date of the bid opening; one was from the State's own Information System Service Division (ISSD), the other from a privately-owned firm. A five-member selection committee ranked the bidders and chose the private firm as the lowest bidder. A firm fixed-price contract for \$460,270 was awarded by the State on November 1, 1974, with work to commence on November 6, 1974 and to end on December 31, 1975.

According to the Audit Report, the contract terms required that the contractor provide periodic progress reports (every 30 to 60 days) so that the proper amount of payment could be determined. Work progressed on schedule until April 1975 when work began to get behind schedule. At that point, the contract had been in effect for six months, and the contractor had received 37.3% of the contract price. The contractor complained that the required progress reports were too time-consuming, and the Department relieved it of the responsibility

of preparing them; weekly meetings were to be held instead. The State continued to pay the full amounts of the submitted invoices even though it knew of additional schedule delays. As of November 30, 1975, the total amount of the contract had been paid although less than 50% of the work had been completed. A supplemental contract dated December 12, 1975, increased the scope of work at an additional cost of \$163,890.

In May 1976, the contractor submitted a revised schedule, showing a new completion date of October 8, 1976, nine months after the original target date. The schedule was accepted by the Department, but it requested that brief weekly reports be submitted. Three of these reports were submitted; the last was dated June 30, 1976 and showed that 69% of the contract had been completed. No additional work was done after that date. The Department notified the contractor on January 5, 1977, that the contract and supplemental agreement were being terminated because of contractor non-performance; West Virginia says that the contractor "left the State" (Application for Review, p. 1).

Relevant Statutory and Regulatory Provisions

Under Title XIX of the Social Security Act (Medicaid), amended in 1972, a state may receive Federal reimbursement of 90% for the costs of designing, developing and installing Medicaid mechanized claims processing and information retrieval systems.

The disallowance in question and our decision are not based on the MMIS regulations, but rather on several sections of 45 CFR Part 74, Appendix C.

Appendix C is applicable in this case which involves a state government. 45 CFR Part 74, Appendix C Part I, A.3 states that, "these principles will be applied in determining costs incurred by State and local governments under Federal grants..." 42 CFR 450.90(b)(1)(B) also states that "methods and procedures for properly charging the costs of all systems...shall be in accordance with 45 CFR Part 74..."

The relevant sections of Appendix C will be discussed in the next section.

Issues Raised by the Parties

The State asserts that it was in the process of discussing additional funds for completion of its MMIS with the Regional Office when the contractor left the State. It argues that had the contractor not left and had the additional funds been provided, there would have been a complete, functional system (Application for Review, p. 1). If this had been the case, HEW would still be paying more than it originally would have, because of the State's management practices.

The State notes (Application for Review, p. 1) that a number of the MMIS implementations in other states had encountered time and cost overruns, as have other projects throughout the Federal government. But these situations, if they exist, do not necessarily absolve the State of its responsibility; West Virginia does not assert that the Federal government has approved FFP for work never completed because of a grantee's poor management, nor that, if it had done so, it would have acted properly.

The State did not properly and efficiently administer its grant program in accordance with 45 CFR Part 74, Appendix C, Part I, C.1.a because it made advance payments that added up to the entire contract price. 45 CFR Part 74, Appendix C, Part I, C.1.a states that:

To be allowable under a grant program, costs must
... be necessary and reasonable for proper and
efficient administration of the grant program...

The State's system of advance payments reflects a lack of the "sound management practices" required by 45 CFR Part 74, Appendix C, Part I, A.2.a, which states that:

The application of these principles is based on
the fundamental premises that... State and local
governments are responsible for the efficient
and effective administration of grant and con-
tract program through the application of sound
management practices.

It would not necessarily have been unreasonable or poor management for the State to make some advance payments, especially if they had been based on progress made on the job. Here, however, with no regard for the amount of work performed, the State paid the entire contract price in advance.

West Virginia also contravened Appendix C. Part I, A.2.b; that section states:

The grantee or contractor assumes the responsi-
bility for seeing that federally assisted program
funds have been expended and accounted for con-
sistent with underlying agreements and program
objectives.

The State was not free to release the contractor from its obligation to furnish progress reports and still claim Federal reimbursement.

The State, in its Application for Review, page 2, mentions Senate hearings on MMIS. Although these hearings illuminate the events leading up to the awarding of the MMIS contract in West Virginia (Hearings on Medicaid Management Information Systems Before the Subcommittee on Investigations of the Senate Committee on Government Operations, 94th Cong., 2nd Sess. (1976))), they are not directly relevant to the disallowance in question.

Conclusion

In view of the foregoing discussion, it is our opinion that the State's payment of the contractor for work not done and its failure to maintain normal and reasonable controls violated the requirements of 45 CFR Part 74, Appendix C, Part I, A.2.a, A.2.b and C.1.a.

Accordingly, we deny the appeal and affirm the determination of disallowance in the sum of \$112,339. This decision constitutes the final administrative action on this matter.

/s/ Bernard E. Kelly

/s/ Thomas Malone

/s/ Malcolm S. Mason, Panel Chairman