

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: Columbia University
Docket No. 78-147
Decision No. 72

DATE: DEC. 28, 1979

DECISION

In a letter dated November 6, 1978, Columbia University, grantee, appealed to the Departmental Grant Appeals Board pursuant to 45 CFR Part 16 the October 4, 1978 adverse determination by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Informal Grant Appeals Committee pursuant to 42 CFR Part 50. The October 4 determination upheld the May 31, 1978 determination by the Financial Advisory Services Officer of ADAMHA requiring the grantee to return \$3,770 under Grant No. 5 T21 MH 12967 to the Government.

Procedural Background

In a memorandum dated December 20, 1978, the Executive Secretary of the Departmental Grant Appeals Board notified ADAMHA of the appeal and requested a response within 30 days. The Agency filed a response on January 10, 1979. By letter dated June 21, 1979, grantee was directed to respond to an Order to Show Cause. The Order outlined the facts and issues as they appeared in the file and indicated that the case would be decided on the written record and argument. Grantee was directed to show cause why the Board should not proceed to decision on the record already made and to identify the respects, if any, in which the summary of facts and issues was materially incomplete or inaccurate. Grantee was invited to brief any issues which it considered might affect the result of the case and directed to address the question: "What are the reasons, if any, why the appeal should not be dismissed on the ground that the expenses charged to the grant are inconsistent with the cost principles in Section J.7(i), Appendix D, Part I, Subpart Q, of 45 CFR Part 74..." The grantor agency was notified that it was not required to respond although it could if it wished to, but would be afforded a further opportunity to respond if new issues were raised. The grantor agency in a memorandum dated July 12, 1979 stated that it did not wish to respond to the Order.

In a letter dated July 20, 1979, the grantee responded to the June 21, 1979 Order, correcting an obvious but significant typographical error in the Order. Grantee also proposed a resolution of this matter to which the Agency has not responded and evidently does not accept.

Facts

The following facts are taken from the file. In December, 1971, grantee submitted a proposal to the National Institute of Mental Health entitled: Training Labor-Management Staff for Mental Health Care. The proposed budget included the stipulated labor time and effort and cost to the agency for the principal investigator of the project. The stipulated time and effort was 20% requiring the principal investigator to devote a full day a week. The grantee was awarded the grant (MH-12967) in support of the project in May, 1972 for a four-year period (July 1, 1972 - June 30, 1976). The award for the initial budget year and the three subsequent years included funding in support of the 20% stipulated time and effort and the principal investigator received the payments in excess of his salary which were never questioned upon audit. During the budget year July 1, 1975 - June 30, 1976 another principal investigator was named by the grantee but the stipulated time and effort charged to the grant did not change. The payment made during this period was questioned upon an audit review and recommended for disallowance because the payment was characterized as additional compensation.

The new principal investigator's salary was set at \$18,850 per year. During the period July 1, 1975 - May 31, 1976 she received \$26,808 which included the base salary plus additional compensation of \$3,770 and summer compensation of \$4,188.

The grantee has a policy of permitting an officer of instruction pursuing research interests on a sponsored project within the University to receive up to an additional 20% of his base salary by pursuing research interests on a sponsored project within the University. The additional compensation must be approved by the sponsor (in this case the government agency) and payment is made by the grantee when the compensation is clearly indicated in the budget and when the award of funding for the proposed project is received including the necessary funding for the additional payment. Grantee admits that the additional compensation was not specified in its budget and that in its request to NIMH to promote a new principal investigator, permission to pay additional compensation was not requested. This was required both by its own stated policy and by the Federal cost principles discussed below.

Regulations and Cost Principles

Federal Management Circular (FMC) 73-8 contains the cost principles followed by the Department of Health, Education, and Welfare (DHEW) in determining the allowability of charges to grants made to institutions of higher education. The Circular was implemented by OASC-1, A Guide for Colleges and Universities and by 45 CFR Part 74. The language in the principles is substantially the same as Appendix D, Part I, Subpart Q of 45 CFR Part 74 which covers grants to such institutions. Part 74 of 45 CFR was published in the Federal Register on September 19, 1973.

45 CFR Part 74, Subpart Q, Appendix D, Part I, J.7(1) states in pertinent part:

"Charges for work performed on Government research by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the practice of the institution concerned, constitutes the basis of his salary... In no event will the charge to research agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period, and any extra compensation above the base salary for work on Government research during such period would be unallowable... However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided such consulting arrangement is specifically provided for in the research agreement or approved in writing by the sponsoring agency." (emphasis added)

Discussion

The ADAMHA Informal Grant Appeals Committee concluded that the payment of additional compensation conflicted with FMC 73-8 and sustained the audit recommendation because, contrary to University policy, sponsor approval was not obtained and because grantee did not contest the finding that the salary payment was in excess of the academic base salary. Further, regarding the fact that the payment had been made without question in previous years the committee indicated that it found no evidence to indicate that the NIMH was aware that the salary requested and awarded in the previous years was to be in excess of the faculty member's salary.

Grantee contends that the Agency is not distinguishing between the form of the payment and the actual expenditure. Grantee also asserts that the disallowance is based on procedural grounds and that the disallowance can therefore only be substantiated by showing that its procedural failure contributed to or led to a different set of outcomes than those which would have occurred had the procedure been strictly observed. Since the payment was not in excess of that permitted by university policy or that stipulated in the budget, grantee contends that there is no difference in the outcomes. This contention is without merit. Prior approval is a prerequisite to the receipt of additional compensation.

The grantee contends that the consequence and effect of the decision to disallow the expenditure violates the terms of the agreement between the NIMH and the University since the disallowance is tantamount to declaring that the principal investigator of the grant made no stipulated contribution to the project in terms of labor, time and effort or to declare that the faculty member's time and effort should be at no cost to the government. This contention is also without merit. Grantee's June 28, 1978 letter appealing the determination to disallow the expenditure, concedes that contrary to proper procedure, in its request to promote a new principal investigator, grantee failed to request to pay additional compensation. Moreover, grantee concedes that it failed to follow its own customary practice of specifically indicating in the proposed budget that the stipulated 20% time and effort represented 20% additional compensation permitted under the university faculty compensation policy.

Conclusion

Accordingly, the appeal is denied and the determination by the ADAMHA Informal Grant Appeals Committee is affirmed on the grounds that the expenses charged to the grant are inconsistent with the cost principles in J.7(1), Appendix D, Part I, Subpart Q, 45 CFR Part 74.

/s/ David V. Dukes

/s/ Bernard E. Kelly

/s/ Malcolm S. Mason, Panel Chairman