

DEPARTMENTAL GRANT APPEALS BOARD

Department of Health, Education, and Welfare

SUBJECT: American Foundation for Negro Affairs DATE: DEC. 28, 1979
Philadelphia, Pennsylvania
Docket No. 79-4
Decision No. 73

DECISION

This case involves a request by the grantee, American Foundation for Negro Affairs (AFNA), to the Health Resources Administration (HRA), Public Health Service (PHS) to transfer \$1500 from the consulting category to the travel category of Grant #1018M13118-06, a Special Health Career Opportunity grant under Section 774(b) of the PHS Act and 42 CFR Part 57, Subpart S. Both the Grants Management Officer, Bureau of Health Manpower, HRA, PHS, and an ad hoc Grant Appeals Review Committee disapproved a portion of the proposed transfer that would cover the costs for presentations to the U.S. Commissioner of Education and Assistant Secretary for Education. The grantee claimed that, previous to PHS disapproval, it received approval for the transfer in a letter from Rene F. Cardenas, then a program officer, Fund for the Improvement of Postsecondary Education, Office of the Assistant Secretary for Education.

The Chairman accepted jurisdiction over this case despite the grantee's persistently inadequate response to an initial question of the timeliness of the appeal (e.g. letters from the Executive Secretary of the Board dated February 6, 1979 and March 29, 1979 and telephone conversation dated April 10, 1979 and letters from the grantee dated April 3, 1979 and April 12, 1979), but directed the grantee in an Order to Show Cause to show why the appeal should not be dismissed on the merits on grounds specified in four numbered subparagraphs. The grantee's response failed to address the issues raised in the Order.

Prior Approval-Proper Official

The Notice of Grant Award-Revised (9/28/77), Item 16, notes that the grant is subject to the terms and conditions imposed by the PHS Grants Policy Statement and 45 CFR Part 74.

The PHS Grants Policy Statement (October 1, 1976) states that all rebudgeting requests that require prior approval must be submitted to the grants management officer designated on the Notice of Grant Award. That officer is responsible for reviewing the request and preparing a prompt answer (p. 67).

Section 45 CFR 74.107 (October 1, 1976) states that the granting agency shall review the request and notify the grantee. Section 45 CFR 74.3 defines "granting agency" as the operating agency of HEW authorized to award and administer grants. The grantee has submitted no notification of approval by the granting agency, PHS. Mr. Cardenas, whose concurrence the grantee relies on, was not authorized to approve, and the grantee has failed to respond to direct questions by the Board seeking the basis, if any, for the grantee's intimation that his letter to the grantee was intended or could be intended as an approval or was even related to the present grant.

Use of PHS Grant Funds for Travel Expenses for Presentations to the Office of Education and Assistant Secretary for Education

The PHS review committee in its December 6, 1978 letter to the grantee characterized the expenditure in question as "travel performed for the purpose of seeking new or continued funding from other governmental agencies..." and stated that it was beyond the scope and purpose of the grant. The grantee in its October 10, 1978 letter to HRA characterized the meetings as an effort to "apprise them (officials within the Office of Education) of the work of AFNA and to ensure HEW's continued support and cooperation."

45 CFR Part 74, Appendix F, B sets out the basic considerations in determining the allowable costs of a grant to a nonprofit institution. Generally, Appendix F, B.4(a) states that (apart from distributable indirect costs) a cost is allocable to a grant if it is "incurred specifically for the grant." Appendix F, C.1 states that a direct cost is "any cost which can be identified specifically with a particular cost objective... Costs identified specifically with the grant are direct costs of the grant and may be charged directly thereto." The costs in question have been claimed as direct costs rather than as part of an indirect cost pool. Nothing in the record indicates that the travel costs in question were incurred specifically for the PHS grant.

45 CFR Part 74, Appendix F, G.46 sets out the standards to be applied in establishing the allowability of travel costs for nonprofit institutions. Section G.46(d) states that travel costs "directly attributable to specific grant...performance are allowable" and may be charged to the grant as a direct cost.

Travel expenses charged to a PHS grant may not be used without authorization to attempt to acquire Office of Education funding or to persuade the Office of Education to continue funding other AFNA projects. Nothing in the record indicates that such an activity is directly attributable

to performance of the PHS grant. Section G.46(c) states that travel costs incurred in "the normal course of overall administration of the business are allowable and shall be treated as indirect costs". The grantee in this instance, however, was treating the expenditure as a direct cost. If this were an indirect cost rate negotiation it would have taken an entirely different course, and different appeal procedures would have been applicable (45 CFR Part 75).

The grantee's essential argument in its response to the Order to Show Cause is that payment of the disallowance will be a hardship. The grantee may be correct but if the expenditure was unauthorized, this Board should not excuse it because of hardship.

Conclusion

Accordingly, we deny the appeal and affirm the determination by PHS to disapprove the transfer of funds between two categories of a PHS grant to cover the costs of presentations to the Office of Education and Assistant Secretary for Education.

/s/ David V. Dukes

/s/ Bernard E. Kelly

/s/ Malcolm S. Mason, Panel Chairman