

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LABOR &)
EMPLOYMENT SECURITY, DIVISION OF)
EMPLOYMENT & TRAINING,)
)
Petitioner,)
)
vs.) CASE NO. 82-167
)
PUTNAM COUNTY BOARD OF COUNTY)
COMMISSIONERS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held before the Division of Administrative Hearings by its duly designated Hearing Officer DONALD R. ALEXANDER, on March 30, 1982, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Sonja P. Mathews, Esquire
Suite 117-Montgomery Building
2562 Executive Center Circle, East
Tallahassee, Florida 32301

For Respondent: Sam S. Browning, III
Post Office Box 758
Palatka, Florida 32077

BACKGROUND

On January 6, 1982, Petitioner, Department of Labor and Employment Security, Division of Employment and Training (Division), issued its Final Determination concerning certain expenditures of funds by Respondent, Putnam County Board of County Commissioners, under the Comprehensive Employment and Training Act (CETA). In the Final Determination, Petitioner recommended that \$20,653 in expenditures made under various contracts be disallowed because Respondent had failed to comply with applicable regulations, and that it repay the Division that amount of monies.

Respondent disputed the recommendation and requested a formal hearing pursuant to Subsection 120.57(1), Florida Statutes. The matter was forwarded by Petitioner to the Division of Administrative Hearings on January 22, 1982, with a request that a Hearing Officer be assigned to conduct a hearing. By Notice of Hearing dated February 19, 1982, the final hearing was scheduled for March 30, 1982, in Tallahassee, Florida.

At the final hearing Petitioner presented the testimony of Sam S. Browning, III, Director of Special Services for Putnam County, and James Harris, Division

Internal Auditor, and offered Petitioner's Exhibits 1-5, each of which was received into evidence. Respondent presented the testimony of Larry Miklus, Division Employment Training Specialist, and Sam S. Browning, III, Director of Special Services for the County.

Pursuant to the provisions of Rule 28-5.1055, Florida Administrative Code, the undersigned made a diligent inquiry of Respondent's prospective representative, Sam S. Browning, III, during a non-adversary proceeding, under oath and on the record, to assure that the prospective representative was qualified to appear in this proceeding and capable of representing the rights and interests of Respondent. Such a finding was made and read into the record.

Proposed findings of fact and conclusions of law, were filed by Petitioner on April 9, 1982, and have been considered by the undersigned in the preparation of this order. Findings of fact not included in this order were considered irrelevant to the issues, immaterial to the results reached, or not supported by competent and substantial evidence.

At issue herein is whether Respondent should be required to repay \$20,653 in monies allegedly expended in violation of applicable rules and standards.

Based upon all the evidence, the following findings of fact are determined:

FINDINGS OF FACT

1. The State of Florida is the recipient of financial assistance through a grant from the United States Department of Labor under the terms of the Comprehensive Employment and Training Act (CETA). The monies are to be used to provide job training and employment opportunities for economically disadvantaged, unemployed or underemployed persons. Petitioner, Department of Labor and Employment Security, Division of Employment and Training (Division), acting on behalf of the State, disburses the Federal monies to various units of local government pursuant to contracts entered into by Petitioner and those units. Such contracts require that all monies expended thereunder be in accordance with applicable regulations. As is pertinent here, these regulations include portions of Sections 94, 99 and 676 of Volume 20, Code of Federal Regulations, Section 29-70.216-5 of Volume 41, Code of Federal Regulations, and Federal Office of Management and Budget Circulars A-87, 74-4 and 102-G.

2. The Division, in conjunction with an independent certified public accounting firm, is responsible for auditing CETA contracts to insure compliance with applicable regulations. Any costs found to be in contravention of Federal or State regulations are recommended to be disallowed. After the audit is completed a Final Determination is issued by the Division containing its determination of allowable and non-allowable costs. The final disposition of these costs at the State level is appealable to and reviewed by the United States Department of Labor.

3. As is pertinent here, Petitioner and Respondent, Putnam County Board of County Commissioners, entered into Contract Nos. 79MP-1B-04-64-01, 79-MP-2U-04-64-01, 79MP-2U-04-64-01, 79MP-1F-04-64-01-P2, 80ET-86-04-64-01-015 and 80ET-87-04-64-01-026 covering the periods between October 1, 1978 and September 30, 1980. These contracts were subsequently audited by the Division and found to contain discrepancies in the following four areas:

(a) Ineligible participants - In late 1979 and early 1980, Respondent enrolled Randall K. Addison, Edward Offord, Edward L. Baker and Alvin Lavain as

participants in Title II-D and Title VI programs. During their involvement with the programs, the individuals received \$15,558 in contract funds as compensation for their services. All were certified as being eligible by Respondent on the basis that each had been unemployed at least fifteen out of the twenty weeks preceding the date of their applications. The certifications were based upon information supplied by the applicants to Respondent's intake officer.

A subsequent Division audit disclosed that the participants had not been unemployed at least fifteen out of the preceding twenty weeks as required by applicable regulations, and were therefore ineligible for participation. In making this finding, Division auditors relied upon a master printout of employment history compiled by the Bureau of Unemployment Compensation which contained a detailed history of dates of employment of each of the individuals. It also found information on certain applications themselves which should have alerted Respondent that the applicants may have been ineligible.

When the certifications were made, Respondent's policy was to rely upon the employment information supplied by applicants. If the individuals cited prior employment in the Palatka area, subsequent inquiries with those employers were made to verify the accuracy of information given by the applicants. Out-of-town employment histories were not verified, and the County did not have the ability to ascertain whether the individuals had truthfully reported all employment, particularly where it occurred outside Putnam County. It also did not have access to the Bureau's master computer printout to confirm the accuracy of information supplied by applicants.

(b) Roger Livingston - Roger Livingston was employed in Title II-D and Title VI programs between October, 1978 and September, 1979. While employed, he received \$3,132 in compensation. He was assigned to work as a cook for Putnam Half-Way Houses, Inc., a subcontractor of Respondent. It was later discovered that Livingston's brother, W.C. Livingston, served on the subcontractor's Board of Directors at the same time and actually signed his brother's timesheets. Department regulations prohibit the hiring of any person if a member of that person's immediate family is engaged in an administrative capacity for the employing agency. Because the participant's brother occupied such a position, the costs were properly disallowed.

(c) Insurance costs - Between October, 1978 and September, 1980, Respondent allocated to the applicable contracts a pro-rata portion of group insurance costs totaling \$1,324 for four County staff members who dedicated a part, of their time to CETA functions. An allocation was required since the staff members were covered by a County group self-insurance program. In allocating the costs, the County used the same method of allocation as was used in allocating the pro-rata insurance costs of other CETA participants employed by the County. Although the Division questioned these costs on the basis that no supporting documentation was furnished, the County did provide the basis for allocation of the charges.

(d) Workman's compensation - Respondent estimated its workman's compensation premiums when preparing its original budgets. Actual expenditures exceeded budgeted amounts by \$196, and that amount was expended without authority from the Division. Therefore, the costs were properly disallowed.

4. In reply to the charges, Respondent contended it acted in good faith in attempting to comply with Division regulations. As to the insurance charges in question, it stated it provided documentation to the auditors to verify the consistency of the charges. In the case of Roger Livingston, Respondent

asserted that his brother did not supervise him nor could he hire or fire him. The County also sought clarification as to Livingston's status from a Division placement planner assigned to Putnam County, and was told the matter was insignificant in relation to the total size of the budget. Finally, the County contended it had no access to state employment records to verify employment histories of applicants. Because of this, it necessarily had to rely upon information supplied by applicants, but did make a good faith effort to check local references to insure that applicants were indeed eligible.

CONCLUSIONS OF LAW

5. The Division of Administrative Hearings has jurisdiction of the subject matter and the parties thereto pursuant to Subsection 120.57(1), Florida Statutes.

6. Pursuant to the provisions of Chapter 17, United States Code Section 801 et seq. the State of Florida received financial assistance from the United States Department of Labor for the purpose of establishing programs to provide comprehensive employment and training services for economically disadvantaged persons

7. Petitioner is responsible for carrying out the duties and responsibilities reposed by the Department of Labor upon recipients of manpower funds received by the State. Subsection 450.55(2), Florida Statutes. These duties include "... (signing) contracts on behalf of the state ... with program operators contracting with the state under the Comprehensive Employment and Training Act..." Subsection 450.55(3), Florida Statutes.

8. At issue are four broad categories of expenditures. Each will be discussed separately.

A. Ineligible participants - The Department contends that the contract funds paid to four ineligible participants in 1979 and 1980 should be repaid under the authority of 20 CFR 99.42(a)(1)(i) which provides in part as follows:

- (1) An eligible person ... must be a person:
 - (i) Who, during 15 of the 20 weeks immediately prior to the application, has been unemployed...

The ineligibility of the participants was discovered by Division auditors who reviewed the applications and compared them with Bureau of Unemployment Compensation records to verify the accuracy of the information submitted by the applicants.

Respondent relied upon the employment information given by applicants to its intake officer. Other than local references, it had no ability to verify undisclosed employment outside the county. Further, it had no access to the computer data assembled by the Bureau of Unemployment Compensation. Even if 30-day and 60-day checks were made, as required by regulations, Respondent would still have been unable to detect any undisclosed employment of applicants outside of the Palatka area. Accordingly, it is concluded that those costs associated with participants who were later found to be ineligible due to employment outside Putnam County should be allowed. However, the contract funds paid to participants who were employed in Putnam County just prior to the applications being filed, and who should have been determined to be ineligible

by reasonable checks, or by a review of the applications themselves, should be disallowed.

B. Charles Livingston - The Division contends the funds expended on Livingston should be disallowed on the ground a member of his immediate family was on the Board of Directors of the organization with whom he was employed. Subsections 676.66(a) and (c) of Volume 20, Code of Federal Regulations, provide in part as follows:

(a) No recipient, subrecipient or employing agency may hire a person in (a) ... public service employment position, or on-the-job training position funded under the Act if a member of that person's immediate family is engaged in an administrative capacity for that recipient, subrecipient or employing agency.

(c) For purposes of this section:

(1) The term "immediate family" means ... brother ...

(2) The term "person in an administrative capacity" includes those persons who have overall administrative responsibility for a program, including all ... officials who have any responsibility for the obtaining of and/or approval of any grant funded under the Act, as well as other officials who have influence or control over the administration of the program...

Clearly, Livingston's brother is a member of his immediate family and served in an administrative capacity within the meaning of the rule. Accordingly, the expenditure of funds for Livingston was incorrect, and the County should repay the Division \$3,132.

C. Insurance Costs - The recommended disallowance of \$1,324 in costs is based upon Subsection 2(g) of Office of Management and Budgeting Circular No. A-102, Attachment G. That subsection requires that a subgrantee provide:

[a]ccounting records that area supported
by source documentation.

It is alleged that Respondent was unable to furnish the internal auditors sufficient "source documentation" to support the pro-rata allocation of certain group insurance costs. In response, the County points out that it did in fact provide certain documentation to reflect that the costs were allocated on a basis consistent with the allocation of group insurance costs for other CETA participants. Although Petitioner contends that Respondent did not submit a "plan" for approval of these charges, it cited no regulation imposing this requirement. This being so, it is concluded Petitioner has failed to demonstrate precisely what type of auditing evidence was required, and why the documentation shown was insufficient. Accordingly, these costs should be allowed.

D. Workman's Compensation - Respondent acknowledged it underestimated its workman's compensation costs thereby resulting in an over-expenditure for this

item. Because the charges were in contravention of the contract, they should be disallowed.

9. Petitioner did not present any evidence on the remaining \$443 in dispute. Accordingly, that amount should also be allowed.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that Respondent repay Petitioner: (1) \$3,124 for wages paid to Charles Livingston, (2) \$196 in excess workman's compensation charges, and (3) those costs associated with participants later found to be ineligible by reason of not being unemployed 15 of the 20 weeks prior to the date of their applications and whose ineligibility was based upon employment in Putnam County prior to their applications being filed. All other questioned costs should be allowed.

DONE and ENTERED this 16th day of April, 1982, in Tallahassee, Florida.

DONALD R. ALEXANDER
Hearing Officer
Division of Administrative Hearings
The Oakland Building
2009 Apalachee Parkway
Tallahassee, Florida 32301
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of April, 1982.

COPIES FURNISHED:

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Tallahassee, Florida 32301

Sam S. Browning, III
P.O. Box 758
Palatka, Florida 32077

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AGENCY FINAL ORDER

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LABOR AND
EMPLOYMENT SECURITY, DIVISION OF
EMPLOYMENT AND TRAINING,

Petitioner,

vs.

CASE NO. 82-167

PUTNAM COUNTY BOARD OF COUNTY
COMMISSIONERS,

Respondent.

_____ /

FINAL ORDER

The undersigned, as Director of the Division of Employment and Training, has reviewed the findings and recommendations of Donald R. Alexander, Hearing Officer, Division of Administrative Hearings, which were based upon the evidence presented at a hearing held in Tallahassee, Florida on March 30, 1982. The findings and recommendations are attached hereto, marked Exhibit "A", and thereby made a part hereof.

FINDINGS OF FACT

1. The Division of Employment and Training has alleged that the Putnam County Board of County Commissioners, in administering grants under the Comprehensive Employment and Training Act (CETA), failed to comply with the applicable rules and regulations. As a result thereof, a total of \$20,653.00 was spent in violation of applicable rules and regulations.

The Putnam County Board of County Commissioners acknowledged that the money was spent as alleged. However, the County contends that the spending was not in violation of CETA, were legitimate costs and should, therefore, be allowed.

2. The findings of fact of the Hearing Officer as set out in the Recommended Order are hereby accepted and adopted.

CONCLUSIONS OF LAW

The Conclusions of Law of the Hearing Officer are accepted, except as set out herein.

3. As those findings of law in paragraph 4.A., the CETA regulations in effect at the time of the contracts in question, required that all persons meet eligibility requirements. See 20 C.F.R. 99.42(a)(1)(i). There is no regulation which excuses the payments of benefits to ineligible participants.

If an ineligible participant is served, there is absolute liability unless forgiven by the Grant Officer. See 20 C.F.R. 676.88(c). Therefore, based upon the CETA regulations, all funds paid to ineligible applicants must be disallowed.

4. As to the conclusion of law found in 4.C., Office of Budget Circular A-87, Attachment B, Paragraph B.13(b), requires that fringe benefits such as insurance costs, must be paid pursuant to an approved plan. In that no plan was submitted, the insurance costs of \$1,324.00 should be disallowed.

WHEREFORE, it is Ordered:

That within thirty (30) days from the Order Putnam County Board of County Commissioners repay \$20,210.00 which was spent in violation of CETA and the applicable rules and regulations.

In the event either party disagrees with this determination, an appeal can be filed with Mr. Lawrence Weatherford, Regional Administrator, United States Department of Labor, 1371 Peachtree Street, N.E., Room 405, Atlanta, Georgia 30309. The provisions pertaining to the appeal process, 20 C.F.R. 676.83 et. seq., are attached hereto.

Dated this 29th day of June, 1982, in Tallahassee, Leon County, Florida.

CHARLES R. RUSSELL, Director
Division of Employment & Training

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail to SAM S. BROWNING, III Post Office Box 758, Palatka, Florida 32077 this 29th day of June, 1982.

Gloria Byrd