

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LABOR AND)
EMPLOYMENT SECURITY,)
)
Petitioner,)
)
vs.) CASE NO. 84-0719
)
HERNANDO-SUMTER COMMUNITY)
ACTION AGENCY,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Consistent with the Order granting a continuance filed by the undersigned on April 17, 1984, a hearing was held in this case before Arnold H. Pollock, a Hearing Officer with the Division of Administrative Hearings, in Tallahassee, Florida on May 14, 1984. The issue for consideration here was whether the Respondent should reimburse the Petitioner for sums allegedly paid out improperly by the Respondent.

APPEARANCES

For Petitioner: Chad J. Motes, Esquire
Department of Labor & Employment Security
Montgomery Building, Suite 131
2562 Executive Center Circle East
Tallahassee, Florida 32301

For Respondent: Ms. Gladys Brown
Training Director, H-S CAA
Post Office Box 896
Brooksville, Florida 33512

BACKGROUND INFORMATION

By letter dated January 30, 1984, Petitioner's Chief of Bureau of Job Training notified Respondent of the agency's final determination of liability in the total amount of \$1,253 for disallowed costs arising out of the audit of two CETA accounts administered by Respondent. Thereafter, by letter dated February 10, 1984, Respondent requested a formal hearing.

At the hearing, neither party presented the testimony of witnesses, but introduced Joint Exhibits 1 and 2. The parties entered into an oral stipulation regarding the circumstances leading up to the audit determinations, submitting the issue of adequacy of Respondent's actions to the Hearing Officer.

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) for the provision of job training and employment opportunities to a certain category of persons. Petitioner here, Department of Labor and Employment Security, for the State, disburses these funds to various subgrantees, such as Petitioner here, Hernando-Sumter Community Action Agencies (H-S CAA), with the requirement that the subgrantee expend the money in accordance with applicable regulations.

2. Petitioner is also responsible for insuring compliance with these regulations through audits of the subgrantee's operations. If the audit reveals a discrepancy, a Final Determination is made by Petitioner relating to allowable and nonallowable costs. These Final Determinations are appealable.

3. In the instant case, Petitioner and Respondent entered into Subgrant Nos. 2-37-120-079, Title IV (Richard Kiefer); and 3-11-054-079, Title IIB (Karen Check). Audits of these two subgrants during the period October 1, 1981 - June 30, 1983, revealed discrepancies in the accounts. The audit reports on inter alia, these two accounts were furnished to Respondent on October 5, 1983. After communication back and forth between the parties, Petitioner's final determination of liability was furnished Respondent, as was stated above, on January 30, 1984. Reimbursement was requested by Petitioner based on the applicable regulations and, it is stipulated between the parties, an agreement that Petitioner would delegate responsibility for determining eligibility to Respondent. Along with that responsibility went the collateral responsibility for whether reimbursement of costs of Respondent was wrong either deliberately or through negligence.

4. Subgrant No. 2-37-120-79 concerns payments of wages and benefits paid to Richard Kiefer. In order to properly participate in this program, the participant was required to establish his eligibility by, among other things, the amount of his family income. On the basis of the facts stipulated by the parties, when he entered the program in December, 1981, Mr. Kiefer failed to disclose his full family income by failing to report his sister's income. Mr. Kiefer was paid \$335 per hour for approximately 12 paychecks for a total of \$1,186.00.

5. Respondent contends that the information on family income, as provided by Mr. Kiefer and his mother, failed to list the sister as an in-home family member and to include her income, which was verified as far as possible without discovery of the sister's presence in the home. Discovery efforts were not outlined by Respondent, nor was the lack thereof shown by Petitioner. However, during a subsequent interview with Mr. Kiefer in his home by a representative of H-S CAA, it was discovered that the sister was actually living in the home and, when her income was included, the client was not eligible for participation. An attempt was made to try and determine how long the sister lived in the home and how much of her income should be included, but Petitioner cannot show for how long the overpayment actually took place. In any case, as soon as Respondent's counselor determined that Mr. Kiefer was not eligible, his participation was immediately terminated.

6. Subgrant No. 3-11-054-079 (Karen Check) is a case where the recipient was receiving one type of allowance when, in fact, she should have been

receiving a different type. She was, based on erroneous information furnished by her, receiving a "basic" allowance for participation when, because of her participation in the Aid to Dependent Children (AFDC) program which precludes a recipient from receiving a "basic" allowance, she should have been receiving an "incentive" allowance. The "basic" allowance is larger than the "incentive" allowance.

7. Respondent's own personnel again, here, discovered the error which, at the time of discovery had resulted in an overpayment of \$250.00. Ms. Check was immediately switched over to the correct program and, upon doing so, in order to recoup the overpayment, began deducting a sum from the correct payment. However, before the entire overpayment could be collected, Ms. Check left the payment with the sum of \$67.00 uncollected.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of the proceeding.

9. Pursuant to various provisions of Chapter 17, United States Code, the State of Florida has received grants from the U.S. Department of Labor for the purpose of establishing programs to provide comprehensive employment and training services for "economically disadvantaged persons."

10. Subsection 450.55(2), Florida Statutes, places on Petitioner the responsibility for carrying out the duties and responsibilities assigned to the State of Florida under CETA. These duties include entering into contracts on behalf of the State with program operators to locally administer the program. Respondent was such an operator here.

11. It is incumbent upon Petitioner to take a full and complete application from an applicant to establish his or her eligibility for enrollment in the program [20 CFR 676.75-3(b)(1)]. The application is to be reviewed no later than 30 days after enrollment by an individual other than the intake official to determine, inter alia, that the application is complete [20 CFR 676.75-3(2)(i)]. In addition, the Federal Rules make it incumbent upon the subgrantee to take proper steps to verify an applicant's prior income.

12. In the Kiefer case, it appears Mr. Kiefer and his mother both submitted fictitious information regarding family income. Respondent claims this submittal was verified as far as possible and no evidence to contradict that contention was presented by Petitioner. Here, there is a showing that at some time subsequent to enrollment, it was learned that Kiefer's sister (with income) was living in the home and, immediately upon that discovery being made, Mr. Kiefer was terminated. Petitioner failed to show how long before termination the situation of ineligibility existed and, absent a showing of the amount of overpayment, 1/ Petitioner cannot successfully claim reimbursement for all monies paid out. Had Petitioner established the exact amount of time that Mr. Kiefer's ineligibility existed, Respondent could not rely on the fact that it was given incorrect information by him to escape liability. See 20 CFR 675.57(a); 20 CFR 676.75(3)(b)(2)(B).

13. This is the case in the other situation in controversy here where Karen Check was placed in the improper category because of misinformation she provided. Fairness and the practicalities of the situation dictate that Respondent should not be faulted for having to initially rely on incorrect information given by an applicant. As was stated above, however, lack of negligence and a showing of good faith do not overcome the requirements in the Federal Rules for verification.

RECOMMENDATION

Based on the foregoing, it is, therefore:

Recommended that Respondent repay \$67.20 for Audit #3-11-054-079 as was recommended for disallowance in Petitioner's Final Determination dated January 30, 1984, but that it not repay the \$1,186 for Audit #2-37-120-079.

Recommended this 13th day of June, 1984, in Tallahassee, Florida.

ARNOLD H. POLLOCK, 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 13th day of June, 1984.

ENDNOTE

1/ The only evidence of indebtedness was a secondhand reference in Ms. Batey's January 30, 1984, letter to the results of the audit.

COPIES FURNISHED:

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