



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

APPLICATION OF THE )  
 )  
STATE OF WASHINGTON, )  
 )  
Applicant )  
 )

Docket No. 89-6-R  
Recovery of Funds  
ACN: 10-83248

DECISION OF THE SECRETARY  
TO ADOPT THE INITIAL DECISION  
OF THE ADMINISTRATIVE LAW JUDGE BELOW

Pursuant to 34 CFR 81.32, Washington State (Washington) has petitioned for review of the May 24, 1990, Initial Decision of Administrative Law Judge Daniel R. Shell (ALJ) in the above-cited matter. The Director of the Financial Management Service, U.S. Department of Education (FMS), subsequently filed a response. I have reviewed the record of the case, the Initial Decision, and the above submissions.

In its Petition for Review of the Initial Decision, Washington argues that the Initial Decision generally (1) fails to recognize and address material facts of record; (2) misconstrues material facts; and (3) fails to recognize and address related argument. Petition at 1. Primarily, these assertions are related to the ALJ's assessment of Washington's time distribution and recording system. As a final argument, Washington asserts that the Initial Decision "fails to address Washington's arguments that the \$862,171 at issue mistakenly includes \$17,411 and \$2,404 in salaries and benefits of personnel who were not split funded, as well as an additional \$4,316 due to a calculation error." Petition at 16.

Under the applicable standard of review, the Initial Decision must be upheld if it "[is] supported by substantial evidence and reflects application of the proper legal standards...." Bell v. New Jersey, 461 U.S. 773, 792 (1983) [see also Bennett v. Kentucky, 470 U.S. 656, 666 (1985) and Bennett v. New Jersey, 470 U.S. 646 (1985); 20 U.S.C. 1234a(d)]. I find that the Initial Decision is amply supported by substantial

evidence and that the ALJ applied the appropriate legal standards.<sup>1</sup>

For the foregoing reasons, I AFFIRM AND ADOPT the May 24, 1990, Initial Decision of ALJ Daniel Shell.

This decision signed this 26th day of July, 1990.



Lauro F. Cavazos

Washington, DC

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<sup>1</sup> Although I am unpersuaded by Washington's assertion regarding the ALJ's failure to address Washington's arguments that the \$862,171 at issue "mistakenly includes \$17,411 and \$2,404 in salaries and benefits of personnel who were not split funded, as well as an additional \$4,316 due to a calculation error," further comment on this point may be helpful to the parties. Petition for Review at p. 16. The former amounts, while addressed in Washington's briefs and in the Affidavit of Mr. Bill Paulson (Exhibit Volume I, Affidavit of Paulson, pp. 9-10), were not argued during the oral proceedings. Therefore, judging from the written references to these amounts, I cannot find that the ALJ's failure to specifically address these amounts in his decision constitutes anything more than harmless error. As for the latter amount, the hearing transcript reflects Washington's failure to pinpoint any documentation which would justify a reduction of \$4,316. Transcript at pp. 11-20. While the Affidavit of Paulson describes an alleged audit error regarding expenditure credit entries for a J. Leaf, which, in turn, is noted in the Paulson Affidavit's Attachment B, this amount is not substantiated by introduction into the record of "Report 1578." Affidavit of Paulson, pp. 10-11.