

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

Application of:
MISSOURI DEPARTMENT OF SOCIAL SERVICES,

Docket No. 89-32-R

Recovery of Funds

ACN:07-82127

DECISION AND ORDER

This case arises under Title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 701, **et seq.**), pursuant to which the State of Missouri (**Missouri**) received a vocational rehabilitative services grant from the U.S. Department of Education (**Education**) for the years 1983, 1984 and 1985.

STATEMENT OF THE FACTS

The events leading to the present controversy were as follows: A Missouri State Auditor examined the accounting of the grant funds for the Vocational Rehabilitation (VR.) program for the periods ending June 30, 1984 and June 30, 1985. [1](#) As a result of the audit, certain violations were reported. A program determination letter was issued. It summarized the disallowance of VR program expenditures as follows:

Finding I.A.2 \$ 70,203.00

Finding I.B. 23,594.00

Finding 13. 381,921.10

Total \$475,718.10 [2](#)

The parties agreed that finding I.B. is barred by the statute of limitations. [3](#) Only \$8,062 of finding I.A.2. is due to Education and Missouri does not contest its obligation to pay this amount. [4](#)

Remaining in contest is only finding 13 in which the sum of \$190,510.64 of fiscal year 1985 VR funds were disallowed. [5](#) The determination letter provides the following language to explain why Education disallowed that amount:

The questioned costs ... should be disallowed because of MDSS's (Missouri Department of Social Services.) failure to maintain proper time distribution records to support these salaries, which were paid to employees who worked on more than one cost objective The costs questioned by the audit ... included salaries in three categories of employees of the Bureau for the Blind.... [6](#)

The Missouri State Auditor further relates:

A review of the agency's distribution of salaries and benefits between the VR program and the Prevention of Blindness program revealed that the agency had not used time sheets to record time spent by program. [7](#)

The determination letter directs attention to 34 CFR Part 74, Subpart Q-Cost Principles, App. C, Part II, B-Allowable Costs 10 b-Payroll and Distribution of Time (1985):

Amounts charged to grant programs for personal [sic] services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort. [8](#)

Education determined that time and attendance cost principles require distribution records that account for all of the time of employees who work on more than one cost objective. [9](#) Here, the employees were working on the Federal VR program and the State Bureau for the Blind (BOB.) program. [10](#)

The determination letter cited a time study done during four one week periods in fiscal year 1985. The report states:

During this period [the] Bureau of the Blind direct program staff were required "to maintain 100 percent records of their time during the weeks of July 22, August 19, September 9 and September 30." [11](#)

However, the determination pointed out that the Auditor from Missouri's Division of Budget and Finance " did not believe these studies were statistically valid ... and did not use [them] as a method of allocation." [12](#)

Education further determined:

This casts serious doubt on whether this study could, under any circumstances, be used to justify the Federal VR expenditures on the salaries of these employees for a two year period. [13](#)

ARGUMENTS

Education counsel states on page 15 of the transcript of the oral argument:

I guess that our dispute is whether Missouri has got the type of records that are needed under the time distribution requirement to validate those charges to the Federal program. [14](#)

Missouri argues that 34 CFR Part 74, Subpart Q, App. C, Part II, B 10 b states that payable records must be supported by time and attendance **or** equivalent records:

We maintain that we have the equivalent records in the form of a cost allocation plan for indirect costs We have verified the cost allocation plan at least twice and it is sound. [15](#)

Missouri maintains that the costs for employee salaries of those who work on both the VR program and the BOB are indirect costs. They reason that if an employee is working on more than one cost objective, the cost becomes an indirect cost due to the multiple cost objectives. Counsel does admit that the VR program and the BOB are two distinct cost objectives. [16](#) Further, he argues that the Department of Health and Human Service (HHS) agreed to a cost allocation plan that included the allocation of costs between the VR and the BOB programs. He admits that Education did not approve of the cost allocation plan. [17](#)

Counsel for Missouri attempted to prove the approved HHS plan as follows:

Judge Shell: We were at the point where there was a discussion about various OMB Circulars, and I had asked for reference to the indirect cost allocation plan that was approved or whatever is the basis for that cost allocation plan....

Mr. Beaver: It's kind of a mixture, ... the basic plan started off at Exhibit D to the Petitioner's brief.... That is not completely redone over the years. It is just amended and added to.... As you flow through all of the rest of ... Exhibit C, ... E, F, G, H, I, J and M all impact that particular Exhibit as it flows through the years. [18](#)

Missouri points out that Exhibit I is the HHS approval of the cost allocation plan approved through June 30, 1985. When asked specifically, where in Exhibit I does it state that a cost allocation plan is approved through June 30, 1985, counsel responded by saying:

In order to ascertain that Missouri Department of Social Services had a time study in place at all times, you'll have to follow all of those exhibits that I cited to you starting with "C" and running through "M." If you tie all those together, you'll see that there was at all times relevant hereto, an HHS approved time study.... [19](#)

Counsel stated in his argument that the split of the cost allocation plan was 80% Federal and 20% percent State. [20](#) Those percentages were maintained for the years 1980 through 1985. [21](#) Counsel maintains that Exhibit L supports his argument that a valid time study was done and that the results of the study were accepted by HHS. Exhibit L is an unsigned letter to Lynn Fallen. Her agency or authority cannot be determined from the document. There was no method of determining how the study was done, nor were there any notations made as to which individuals were interviewed. [22](#)

Counsel for Missouri refers to various Exhibits C through M to support his argument that all of the exhibits put together represent an HHS approved cost allocation plan for the period of July 24, 1984 through June 30, 1985. Counsel admits that Missouri does not have records of the allocation of time for the period of July 1, 1984 to July 24, 1984. [23](#)

FINDINGS OF FACT AND A DISCUSSION OF THE LAW

Missouri argues the following points:

- A. The costs are to be treated as indirect costs and may be incorporated into a cost allocation plan.
- B. Approval of the plan and/or approval of the time study is an equivalent record which complies with the regulations requiring a grantee of Education funds to keep adequate records.
- C. HHS has approved a cost allocation plan which includes an approved time study of the costs of employees working in the VR and the BOB programs.

A. Indirect vs. Direct Costs

34 CFR Part 74, Subpart Q, App. C, Part II, B 10 b, payroll and distribution of time require:

Amounts charged to grant programs for personnel services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or the cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

Missouri admits that no actual time and attendance records were kept. Missouri argued that the VR and BOB costs are indirect costs which can be allocated. In this case, the costs in question are incurred from two specific programs, the VR and the BOB. There is no dispute that they are two distinct cost objectives.

Direct Costs as defined in 34 CFR Subtitle A, App. C and E:

Direct costs are those that can be identified specifically with a particular cost objective.... Typical direct costs chargeable to grant programs are ... compensation of employees for time and effort devoted specifically to the execution of grant programs.

Indirect costs are those incurred for common or joint objectives, and therefore cannot be readily and specifically identified with a particular project or activity. [24](#)

Administrative salaries may be considered indirect costs if the costs incurred in tracking the costs as direct costs become too expensive or are impractical to track. [25](#)

Here, there are only two separate and distinct cost objectives. The costs can be charged directly. The keeping of records to track the amount of time could easily be kept to assess how much time each employee is working in each cost objective. The argument that indirect costs are created by the mere fact of an employee working on two separate cost objectives is in error. It must be shown that the keeping of actual time distribution records is too expensive or too impractical before one can consider personnel costs as an indirect cost. There is no evidence to show this to

be the situation in this case. I, therefore, find that the costs here are not indirect costs but are direct costs. As direct costs, they cannot be subject to an allocation plan since only indirect costs can be allocated. [26](#)

B. Time Study

No actual records were kept by Missouri regarding the time distribution of the employees working on both the VR and BOB programs. Only time studies were done. A review of Missouri's argument fails to identify in which exhibits the time studies are discussed in detail. Counsel was asked to specifically identify where in the record the time studies were outlined in detail. Only general comments were provided for guidance.

A review of the exhibits does reveal some reference to the time study question. Exhibit G, page 18, step 12(A) states that "the total of the Vocational Rehabilitation Section is 80% and is to be added to form 269." Without further explanation, this reference to the VR program is meaningless. It does not have any facts to support a time study reference. Exhibit H refers to some Social Service time study. However, that exhibit seems to address child care, and no reference is made to the VR or BOB programs. Counsel argued that Exhibit I is the cost approval for the period of the audit in question; but the exhibit does not refer to any specific time studies.

Exhibit L is a letter dated November 1, 1985 from David Vogel to Lynn Fallen. The letter purports to be the results of a time study. The letter states that a four week time study was completed. It does not state to what four week period it relates, how the study was completed, or the identities of the employees surveyed. The letter is unsigned and is addressed to an unknown person. I find the letter to be unreliable.

The only reference to a time study in the record is found in Exhibit A, page ii, paragraph three of the RSA Region VII Determination. The report states:

During the weeks of July 22, August 19, September 9, and September 30, 1985 district office staff charging salaries to VR and State funds kept ongoing records of their time and effort.

However, the State Auditor found those studies not to be statistically valid. Based upon my review of the exhibits submitted, I find that the time study does not provide an equitable distribution of time and effort between the VR and the BOB program.

C. HHS Allocation Plan Acceptance

Missouri has also argued that the cost allocation plan accepted by HHS is an equivalent record. Therefore, they believe that it has complied with the intent of the regulations.

Missouri's argument is unpersuasive. I found earlier that the evidence upon which Missouri relied (Ex. C through M) does not support its argument that HHS ever adopted a cost allocation plan which includes the division of VR and BOB time distribution. It is true that the evidence supports the fact that HHS agreed to some form of a cost allocation plan. Missouri argues, however, that Exhibits C through M are tied together in some fashion. My analysis of the content

of the Exhibits is that they fail to provide any convincing evidence of an approved time study or an accepted cost allocation plan that included the employee costs for those working jointly on the VR program and the BOB program. Therefore, I find that Missouri incorrectly states that an equivalent record is established by the approval of a cost allocation plan adopted by HHS.

CONCLUSIONS

Time records for employees working on more than one cost objective were not done daily. The only record kept was a time study done during four one week periods of time. The time study was not considered reliable by the Missouri state auditor who completed the audit which initiated this action. Missouri employees were working on more than one cost objective. I find that the employee costs for those employees working on the two cost objectives are direct costs. As direct costs, they cannot be allocated in a cost allocation plan. I further find, even though HHS approved an allocation plan, Missouri has not shown that the plan considered a reliable distribution of time between the VR and the BOB programs.

Missouri has failed to provide sufficient convincing evidence to bear the burden that equivalent records were being kept. In order for Missouri to establish that equivalent records are being kept, the method of record keeping used must employ accounting principles done in accordance with generally accepted practice. The method must show an equitable distribution of time. Here, Missouri has not shown that the time studies have been done in accordance with sound accounting practice. In fact, the auditor for the State of Missouri questions the methodology and rejected Missouri's time study used for the cost allocation plan submitted to HHS.

Therefore, Missouri has failed to comply with the record keeping requirements of the General Education Provisions Act and the Code of Federal Regulations governing the keeping of records for payroll employees engaged in work effort on more than one State or Federal program.

Missouri is ORDERED TO REFUND \$8,062 set forth in finding 1.A.2. and \$190,510.64 as set forth in finding 13. The total due is **\$198,572.64**. The matter is referred to the appropriate division of the United States Department of Education for collection.

Daniel R. Shell
Administrative Law Judge

Issued: Washington, D. C.

[1](#) Book I, exhibit 1.

[2](#) Book I, Exhibit 1, pg. 1.

[3](#) Tr. pg. 12.

[4](#) Tr. pg. 11.

[5](#) Education's Exhibit M, revised page 3 of the Regional Commissioner's January 23 submission; Tr. pg. 12.

[6](#) Book I, Exhibit 1, pg. 11.

[7](#) Book II, Exhibit A, pg. 75.

[8](#) Book I, Exhibit 1, pg. 11.

[9](#) Book I, Exhibit 1, pg 12, ¶ 3; Tr. pg. 14.

[10](#) Tr. pg. 13. Education counsel argues this point. He also referred to the joint statement of the parties at item 10. Item 10 is not clear on this point but item 6 does indicate that several employees were working on more than one program

[11](#) Book I, Exhibit 1, pg. 12.

[12](#) Book II, Exhibit A, pg. 75, ¶ 13.4.

[13](#) Book 1, Exhibit 1, pg. 12, ¶

[14](#) Tr. pg. 15

[15](#) Tr. pg 26.

[16](#) Tr. pg. 28.

[17](#) Tr. pg. 32

[18](#) Tr. pg. 32.

[19](#) Tr. pg. 35

[20](#) It is not clear from the argument that the federal share was 80% and the state share was 20%, but Exhibit G refers to such a split.

[21](#) Tr. pg. 36

[22](#) See Exhibit L.

[23](#) Tr. pg. 43

[24](#) Indirect Costs, Management Concepts Incorporated, pg. 1-1 (1988).

[25](#) See 34 CFR Subtitle A, Appendix C, F - Indirect Costs.

[26](#) Education's arguments concerning the Department of Health and Human Services authority to set indirect cost allocation rates for Education funds is not necessary to decide in this case .