DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-200199 DATE: July 7, 1982

MATTER OF: Community Services Administration - Fiscal Year 1979 Crisis Intervention Program funds

DIGEST: 1. Department of Health and Human Services, as successor to Community Services Administration (CSA), should not recover funds expended pursuant to Stipulation and Agreed Order entered to resolve court action alleging CSA improperly withheld payments due plaintiffs under fiscal year 1979 Crisis Intervention Program. Although Order was subsequently vacated, grant fund appropriation was validly obligated prior to close of fiscal year 1979 by filing evidence of potential liability because of pending litigation, pursuant to 31 U.S.C. § 200(a)(6). Funds were therefore still available when grants were made in fiscal year 1980.

2. Department should make further payments to grantees only to the extent grantee incurred obligations in reliance on the grant agreement. Grants may then be terminated.

The Director of the Community Services Administration (CSA) 1/ requested our decision on what action CSA should take concerning the expenditure of funds under the fiscal year 1979 Crisis Intervention Program (CIP), which is the subject of a lawsuit, Siner v. Rios. Under a "Stipulation and Agreed Order" in that litigation CSA committed itself to expend $18 million of CIP funds. In furtherance of the agreements it made in the Stipulation, CSA entered into grant agreements totaling $4.5 million. After part of this sum had been disbursed to the grantees, the trial court vacated the Stipulation and Agreed Order. CSA asked what action it should take with respect to the grants it had made and the funds it had disbursed under the terms of the vacated Order.

1/ CSA was terminated effective October 1, 1981. We understand that its remaining affairs are being handled by the Department of Health and Human Services. References to CSA, where appropriate, also include the Department, as successor to the Administration.

For the reasons explained below, the Department need not recover any of the funds already disbursed to grantees. Further payments need be made to grantees who did not yet receive them only to the extent that the grantees incurred obligations in reliance on the grant agreements. Grants should then be terminated in accordance with the Department's standard procedures.

The action, Simer v. Rios, No. 79 C 3960 (N.D. Ill.) was brought on September 24, 1979, by eight named plaintiffs on behalf of themselves and on behalf of a class of persons. The plaintiffs complained that the CSA had improperly withheld CIP program funds by requiring applicants to furnish unpaid utility bills or a shutoff notice from a utility company in order to qualify for assistance. The plaintiffs filed a motion for partial summary judgment. To avoid the entry of a temporary restraining Order, CSA agreed by Stipulation on September 26, 1979, that it would immediately obligate the approximately $18 million involved to prevent their lapse on September 30. According to the submission, CSA then obligated the funds, "relying on the provisions of title 31 U.S.C. § 200."

At a hearing on January 4, 1980, the trial judge indicated that he intended to grant the motion for summary judgment and that the next step would be to certify a class. The attorneys for both parties informed the court that they believed that it was not feasible to distribute money directly to class members. It was agreed that the case would be continued so that the parties could attempt to reach a settlement.

On April 25, 1980, the judge signed the "Stipulation and Agreed Order" which the parties in the case had agreed to. The Order required CSA to use the "unexpended monies from the 1979 Crisis Intervention Program" to pay $250 towards the heating bills of each of the named plaintiffs, and to effectuate other "Energy Crisis" programs described in the Order in detail.

Specifically, the Order required CSA to provide $4 million for a hypothermia program, $4 million for a program to supply emergency energy conservation kits to needy households, $2 million for a solarization program, $6.5 million for low income and elderly consumer advocacy in energy issues, $1 million for Emergency Preparedness/Impact Assessment and Community Energy Planning programs, and additional funds for several small projects. Also, the agreement specifically provided that "[n]o proof of a shut off notice or any evidence of unpaid utility bills is necessary for program eligibility."

On October 29, 1980, the trial judge vacated the April 25 Order, stating that he believed that ordering the relief set forth in the Stipulation was beyond his jurisdiction. In his memorandum opinion he indicated that he viewed the settlement as essentially providing class

relief. Since both parties had conceded earlier that the case was unmanageable as a class action, he believed the Order to be improper.

The plaintiffs appealed the district court's decision to the United States Court of Appeals for the Seventh Circuit. On October 7, 1981, the appellate court affirmed the district court's judgment, holding that the court below had acted properly by not certifying the plaintiff's action as a class action. Simer v. Rios, 661 F.2d 655 (7th Cir. 1981). The Supreme Court has denied certiorari.

Immediately after the judge had signed the Order on April 25, 1980, CSA began the process of implementing the programs described in the Order. CSA made most of the hypothermia and many of the solar grants required by the Order. Before the Order was vacated in October 1980, CSA awarded approximately $4.5 million in grants to various organizations. The attorney for CSA has stated that it awarded funds to some 15 to 20 hypothermia and/or solar grantees. CSA has not committed any more funds since October 29, 1980, and there is a balance of uncommitted funds of approximately $13.5 million. The grantees have expended most, but not all, of the $4.5 million awarded, according to the CSA attorney.

The submission asked whether CSA must recover from its grantees the funds it disbursed before the court vacated the Stipulation and Agreed Order. CSA also asked whether it was obligated to the grantees to whom awards were made but who had not received their funds by October 29, 1980.

Funds for the 1979 Crisis Intervention Program were included in a lump sum for "Community Services Program" appropriated by section 101(a) of Public Law 95-482, 92 Stat. 1603, a continuing resolution. The program itself is authorized by section 222(a)(5) of the Community Services Act of 1974, as amended, 42 U.S.C. § 2809(a)(5) (Supp. III 1979). It allows the Director of CSA to conduct:

> "A program to be known as 'Emergency Energy Conservation Services' designed to enable low-income individuals and families, including the elderly and the near poor, to participate in energy conservation programs designed to lessen the impact of the high cost of energy on such individuals and families and to reduce individual and family energy consumption.* * *"

The subsection furthers provides:

> "The Director is authorized to provide financial and other assistance for programs and activities, including, but not limited to, an energy conservation and education program;

> winterization of old or substandard dwellings, improved space conditioning and insulation; emergency loans, grants, and revolving funds to install energy conservation technologies and to deal with increased housing expenses relating to the energy crises; alternative fuel supplies, special fuel voucher or stamp programs; alternative transportation activities designed to save fuel and assure continued access to training, education, and employment; appropriate outreach efforts; furnishing personnel to act as coordinators, providing legal or technical assistance, or otherwise representing the interests of the poor in efforts relating to the energy crisis; nutrition, health, and other supportive services in emergency cases; and evaluation of programs and activities under this paragraph.* * *"

It therefore appears that the grants were made for authorized purposes. As made clear by the above quotation, section 222(a)(5) of the Community Services Act is broadly enough worded to provide the authority for the expenditure of funds for the purpose of making hypothermia and solar grants.

Moreover, at the time the grants were made, CSA's fiscal year 1979 appropriation was still available for that purpose, having been validly obligated before the close of the fiscal year. Although grant awards were not made until fiscal year 1980, CSA asserts that it obligated the funds in fiscal year 1979 "relying on the provisions of Title 31 U.S.C. § 200." Section 200(a)(6) provides:

> "(a) * * * no amount shall be recorded as an obligation of the Government of the United State unless it is supported by documentary evidence of—
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> * * * * *
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> "(6) a liability which may result from pending litigation brought under authority of law * * *."

We agree that CSA complied with the requirements of 31 U.S.C. § 200. While in this instance the Stipulation signed by both parties was used as the obligating document, CSA could, with equal validity, have filed the complaint or any other document providing evidence that litigation was in progress which could result in future liability.

We have had only one other occasion to consider the application of 31 U.S.C. § 200(a)(6) in litigation involving a proposed impoundment. In 54 Comp. Gen. 962 (1975), a preliminary court order, which was issued before an appropriation for the Food Stamp Program lapsed, required the agency to obligate its funds to preserve them, pending final decision on the merits of a controversy over the Department of

Agriculture's refusal to expend funds for an outreach program. We held that the court order was effective to obligate the impounded appropriation balance under 31 U.S.C. § 200(a)(6).

Although the obligating document in the 1975 case was a court order, there is nothing in section 200(a)(6) to suggest that a court order is the only acceptable evidence of potential legal liability.

We conclude, therefore, that CSA's September 26, 1979, agreement by Stipulation to obligate the funds which were the subject of the suit served as the required evidence of a valid obligation of the appropriation balance and prevented its expiration.

Accordingly, at the time the grants were made in 1980 pursuant to the court order, the 1979 CIP funds were still available to liquidate the obligation. It follows that the payments CSA made to grantees were proper and need not be recovered.

With respect to grantees which CSA had not paid before the court vacated its Order, the Government is obligated to pay them only to the extent that they incurred obligations or expended funds in reliance on the promise to reimburse them which CSA made in the grant agreement. If, prior to the court's vacating Order, a grantee did not expend funds, or incur a legal obligation to do so, in reliance on CSA's agreement to reimburse it, the Government is free to terminate the grant in accordance with its standard regulatory provisions.

Shilton J. Adams

Acting Comptroller General
of the United States