
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**CONSULTING AND PROFESSIONAL
SERVICE COSTS CLAIMED
BY THE KANSAS ADVOCACY
AND
PROTECTIVE SERVICES INC.**

March 2004

A-77-04-00009

**MANAGEMENT
ADVISORY REPORT**



Mission

We improve SSA programs and operations and protect them against fraud, waste, and abuse by conducting independent and objective audits, evaluations, and investigations. We provide timely, useful, and reliable information and advice to Administration officials, the Congress, and the public.

Authority

The Inspector General Act created independent audit and investigative units, called the Office of Inspector General (OIG). The mission of the OIG, as spelled out in the Act, is to:

- Conduct and supervise independent and objective audits and investigations relating to agency programs and operations.**
- Promote economy, effectiveness, and efficiency within the agency.**
- Prevent and detect fraud, waste, and abuse in agency programs and operations.**
- Review and make recommendations regarding existing and proposed legislation and regulations relating to agency programs and operations.**
- Keep the agency head and the Congress fully and currently informed of problems in agency programs and operations.**

To ensure objectivity, the IG Act empowers the IG with:

- Independence to determine what reviews to perform.**
- Access to all information necessary for the reviews.**
- Authority to publish findings and recommendations based on the reviews.**

Vision

By conducting independent and objective audits, investigations, and evaluations, we are agents of positive change striving for continuous improvement in the Social Security Administration's programs, operations, and management and in our own office.



SOCIAL SECURITY

MEMORANDUM

Date: March 5, 2004

Refer To:

To: Candace Skurnik
Director
Audit Management and Liaison Staff

From: Assistant Inspector General
for Audit

Subject: Management Advisory Report: Consulting and Professional Service Costs Claimed by Kansas Advocacy and Protective Services Incorporated (A-77-04-00009)

This report presents the Social Security Administration's (SSA) portion of the Review of Consulting and Professional Service Costs Claimed by Kansas Advocacy and Protective Services (KAPS) Incorporated for the period October 1, 1995 through September 30, 2002. The U.S. Department of Health and Human Services (HHS) Office of Inspector General performed the review and provided us with its results. Our objective was to report to SSA for resolution the SSA-related findings identified in the HHS report.

In reporting the results of the review, we relied entirely on the work performed by HHS. The Office of Management and Budget (OMB) Circular A-50 *Audit Follow-up*, provides the policies and procedures for resolving recommendations contained in reports issued by Inspectors General. In accordance with OMB Circular A-50, SSA is responsible for ensuring that appropriate corrective action is taken on the SSA-related recommendations contained in this review.

KAPS is a nonprofit organization which pursues administrative, legal, and other appropriate remedies to ensure the protection of the rights of persons with disabilities. During the seven year period of the review, KAPS received Federal funds totaling about \$6 million from the Department of Health and Human Services, Department of Education, and SSA.

The HHS review found that KAPS charged Federal programs, including SSA, \$491,936 for payments made to, or on behalf of members of its board of directors for consulting and legal fees and health insurance premiums (Attachment A, pages 1 through 5). OMB Circular A-122 *Cost Principles for Non-Profit Organizations*, does not allow these types of payments to officers or employees of grantee organizations. Of the \$491,936 in unallowable costs, \$5,188 was identified to SSA (Attachment A, page 6).

HHS recommended that the unallowable costs be returned to the applicable Federal programs (Appendix A, page 4). In comments to the report, KAPS' legal counsel stated that KAPS is entirely funded with Federal grant dollars and does not possess the non-Federal dollars to refund the disallowed expenditures (Attachment A, pages 7 through 9).

We recommend that SSA: (1) seek restitution from KAPS for \$5,188, and (2) determine if KAPS should be deemed ineligible for SSA funds in the future given the reported funds mismanagement.

Please send copies of the final Audit Clearance Document to Shannon Agee and Rona Rustigian. If you have questions contact Shannon Agee at (816) 936-5590.



Steven L. Schaeffer

Attachments

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General
Offices of Audit Services

Region VII
601 East 12th Street
Room 284A
Kansas City, Missouri 64106

January 9, 2004

Report Number A-07-03-02008

Ms. Anna Silva-Keith
President, Board of Directors
Kansas Advocacy and Protective Services, Inc.
3745 SW Wanamaker Road
Topeka, Kansas 66610

Dear Ms. Silva-Keith:

This letter provides you with the results of our limited scope review of consultant fees, legal fees, and selected health insurance costs charged to Federal grants at Kansas Advocacy and Protective Services (KAPS), Topeka, Kansas. The purpose of our review was to determine the allowability of these expenditures when amounts were paid to, or on behalf of, members of the board of directors of KAPS. Our review covered the period October 1, 1995 through September 30, 2002.

During the period of our review, KAPS paid \$491,936 in unallowable consulting fees, legal fees, and health insurance costs to, or on behalf of, members of the KAPS board of directors. In their response to the draft report, the law firm responding on behalf of KAPS noted that "KAPS is entirely funded with federal grant dollars," and "KAPS does not possess any non-federal dollars to refund any disallowed expenditures." They did note that insurance may provide some recovery of funds ultimately determined to be disallowed. We believe that KAPS should pursue whatever means are available to make restitution to the specified grants.

Background

KAPS is a nonprofit, nonpolitical corporate organization whose purpose is to pursue administrative, legal and other appropriate remedies to ensure the protection of and advocate for the rights of persons with disabilities. The Corporation also obtains, prepares and disseminates informational and educational materials relating to the needs and rights of persons with disabilities and conducts or coordinates training sessions for disabled persons, their families, and the general public.

Page 2- Ms. Silva-Keith

KAPS is governed by a board of directors. According to the by-laws, board members should broadly represent, or be knowledgeable about, the needs of the individuals served by the agency. The by-laws further specify that board members "...shall serve without pay and no financial benefit shall accrue as a result of membership on the Board of Directors."

During the seven-year period of the review, KAPS received Federal funds from as many as five different programs from the Department of Health and Human Services, Department of Education, and the Social Security Administration. The KAPS financial statements reflected \$6,073,037 of expenditures for the Federal grants for the review period as shown in APPENDIX B.

Scope of Review

Our limited scope review was conducted in accordance with generally accepted government auditing standards to the extent practicable. The purpose of our review was to determine the allowability of consultant fees, legal fees and selected health insurance costs charged to Federal grants when these amounts were paid to, or on behalf of, members of the KAPS board of directors.

The review was performed coincident to a request for assistance from the Office of Investigations of the Health and Human Services Office of Inspector General (OIG/OI). Circumstances limiting our review procedures and scope of the review were as follows:

- The review was conducted with records subpoenaed by the OIG/OI and located at the OIG/OI office.
- The access to grantee personnel was generally limited during the review.
- Internal control was reviewed only to the extent necessary to gain an understanding of the accounting system pertaining to the recording and reporting of consulting fees, legal fees and certain health insurance costs.

Our review covered the period October 1, 1995 through September 30, 2002. During the period, KAPS financial statements showed \$6.1 million of expenditures for Federal grants from three different Federal departments. The review covered accounts totaling \$1.3 million of expenditures for the period.

We obtained and reviewed KAPS audited financial statements for fiscal years 1996 through 2001, and unaudited financial statements for fiscal year 2002. From these financial statements we determined total cost charged to Federal grants and total amounts charged for certain categories of interest such as consulting and professional fees and employee benefits. Consulting fees, legal fees and health insurance amounts paid to, or on behalf of, KAPS board members were traced to source documentation such as checks, payment voucher documentation, and accounting distribution documentation attached to the original source documents. Amounts paid to board members were evaluated for allowability and reasonableness based on OMB Circular A-122, *Cost Principles for Non-Profit Organizations*.

Page 3- Ms. Silva-Keith

The review was conducted primarily at the OIG/OI office in Kansas City, Missouri, between January and May 2003. On two occasions, we were able to meet with grantee personnel to discuss items pertinent to the review.

Results of Review

The KAPS paid a total of \$491,936 in unallowable consulting fees, legal fees, and health insurance costs to, or on behalf of, members of the KAPS board of directors summarized as follows:

<u>Consultant</u>	<u>Consulting Fees</u>	<u>Legal Fees</u>	<u>Health Insurance</u>	<u>Total Questioned</u>
A	\$329,442	\$ 70,550	\$ 20,801	\$420,793
B	33,333	-0-	2,810	36,143
C	<u>35,000</u>	<u>-0-</u>	<u>-0-</u>	<u>35,000</u>
Total	<u>\$397,775</u>	<u>\$ 70,550</u>	<u>\$ 23,611</u>	<u>\$491,936</u>

The OMB Circular A-122 (Attachment B, item 39) does not allow costs of professional and consultant services when they are paid to officers or employees of the grantee organization. Furthermore, Circular A-122's *General Principles* (A.2.a. and A.3.b.) states that for a cost to be allowable under an award, among other things, a cost must be *reasonable* for the performance of the award. And, one of the factors in determining the reasonableness of a given cost is *...the restraints or requirements imposed by such factors as generally accepted sound business practices, [and] arms length bargaining....*

Furthermore, as previously noted, the KAPS corporate by-laws specify that board members "...shall serve without pay and no financial benefit shall accrue as a result of membership on the Board of Directors."

Consultant A:

Consultant A was the President of the KAPS board of directors during the period covered by our review. The work statement in the consulting agreement stated the consultant would provide staff litigation and ethics training, consult on all litigation cases initiated by KAPS, and provide strategic training and information about cases being prepared for litigation.

The consulting fees paid to the board president increased from \$10,500 in 1996 to \$82,500 in 2002. Starting in 1999, KAPS paid a total of \$20,801 in health insurance premiums on behalf of the board president. In addition to the consulting fees and health insurance payments, KAPS paid \$30,550 and \$40,000, in 1998 and 1999 respectively, for legal services rendered by the board president. All amounts paid to Consultant A during the period of our review are recommended for disallowance (questioned). The total paid to, or on behalf of, the board president was \$420,793.

Page 4- Ms. Silva-Keith

Consultant B:

Consultant B entered into a consulting agreement with KAPS in January 2000 and became a board member in October 2000. Consultant B continued as both consultant and board member through the end of our review period, September 2002. The consulting agreement duties included "... advocating for better treatment and services and support for children with disabilities and adults with disabilities in juvenile justice or adult correctional facilities, or who are at danger of such placement, and advocating for such processes as can reduce the contact of such persons with the criminal justice facilities and system and reduce reliance on institutional facilities."

KAPS paid consulting fees to (and health insurance premiums on behalf of) Consultant B. We have questioned a total of \$36,143 paid while Consultant B served as both consultant and board member. The amounts questioned covered fiscal years ending September 30, 2001 and 2002 and included consulting fees of \$33,333 and health insurance premiums of \$2,810. Consulting fees of \$35,000, paid prior to Consultant B becoming a board member, were not recommended for disallowance.

Consultant C:

Consultant C entered into two consulting contracts while serving on the board of directors. The first contract, during fiscal year ended September 30, 1997, was for the consultant to establish "evaluation criteria for quantitatively evaluating the county access surveys for all 105 counties in Kansas," and "provide KAPS' with a report of the outcomes and any trends found during analysis." A second contract, during the fiscal year ended September 30, 1998, was for the consultant to "Develop a comprehensive outreach strategy for serving under-served populations w[ith] disabilities."

Both contracts were fixed-fee contracts. The first contract paid \$25,000 and the second contract paid \$10,000. We recommend both amounts for disallowance.

Conclusions and Recommendations

KAPS has charged Federal grants \$491,936 (APPENDIX B) for payments made to, or on behalf of members of KAPS board of directors for consulting and legal fees and health insurance premiums. Governing Federal cost principles (OMB Circular A-122) do not allow these types of payments to officers or employees of grantee organizations.

We recommend that KAPS refund \$491,936 of unallowable costs to the applicable Federal programs (APPENDICES C through G).

KAPS' Comments and OIG's Response

The KAPS indicated in their response they could not present their views on the validity of the facts and reasonableness of the recommendations because the records were not available to them. The response went on to state that KAPS is "entirely funded with

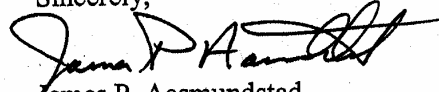
Page 5- Ms. Silva-Keith

federal grant dollars,” and “does not possess any non-federal dollars to refund any disallowed expenditures.” They did note that insurance policies may provide some recovery of funds ultimately determined to be disallowed.

The response also detailed reforms and corrective action being instituted by KAPS, including the hiring of a new executive director and a new fiscal officer. They have also terminated the consultant contracts in question. The text of KAPS’ response is included at Appendix H.

We commend KAPS for instituting corrective action and recommend that KAPS pursue restitution to the specified grants.

Sincerely,



James P. Aasmundstad
Regional Inspector General
for Audit Services

APPENDIX G

KANSAS ADVOCACY AND PROTECTIVE SERVICES, INC.
SCHEDULE OF TOTAL GRANT EXPENDITURES, ACCOUNTS REVIEWED, AND COSTS QUESTIONED
FOR FISCAL YEARS ENDING 09/30/1996 THROUGH 09/30/2002

SOCIAL SECURITY ADMINISTRATION
SOCIAL SECURITY_BENEFITS PLANNING, ASSISTANCE, AND OUTREACH PROGRAM
CFDA 96.008

FYE	Total Grant Expenditures	Total Expense for Accounts Reviewed			Results of Review - Costs Questioned		
		Professional Svcs.	Consulting & Employee Benefits	Total	Professional Svcs.	Consulting & Employee Benefits	Total
1996	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
1997	0.00	0.00	0.00	0.00	0.00	0.00	0.00
1998	0.00	0.00	0.00	0.00	0.00	0.00	0.00
1999	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2000	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2001	16,429.45	1,800.67	1,194.42	2,995.09	1,416.67	0.00	1,416.67
2002 **	36,804.35	4,933.89	2,471.50	7,405.39	3,770.84	0.00	3,770.84
Total	<u>\$53,233.80</u>	<u>\$6,734.56</u>	<u>\$3,665.92</u>	<u>\$10,400.48</u>	<u>\$5,187.51</u>	<u>\$0.00</u>	<u>\$5,187.51</u>

** FYE 2002 Expenditure amounts are from unaudited financial statements.

Appendix H
Page 1 of 3

LAW OFFICES

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**ALSO ADMITTED IN MISSOURI

Our File No.

16681-001

Sender's e-mail
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October 9, 2003

Mr. James P. Aasmundstad
Regional Inspector General for
Audit Services
601 East 12th Street
Room 284A
Kansas City, MO 64106

Re: Report Number A-07-03-02008

Dear Mr. Aasmundstad:

This is a reply to your letter dated July 23, 2003 addressed to Ms. Anna Silva Keith, the current President of the KAPS Board of Directors. Our law firm has been retained as counsel for the KAPS Board of Directors in connection with this and other issues. The subject of this letter is the "Limited Review of Consulting and Professional Service Costs Claimed by Kansas Advocacy and Protective Services, Inc., Topeka, Kansas covering the period from October 1, 1995 through September 30, 2002. We have obtained additional time to reply from Mr. Terry Eddleman, Audit Manager.

We find it nearly impossible to "present our views relative to the validity of the facts and reasonableness of the recommendations presented". The records that we would use to make such a determination are [unavailable].

We also note that complete records are not likely to have been retained back to 1995.

One thing that we can report to you are the numerous reforms that are taking place at Kansas Advocacy and Protective Services. (1) A new Executive Director has been identified and hired. The new Executive Director is an experienced former Kansas policymaker who has worked tirelessly to inform himself about the details of and begin the process of reforming this agency. (2) A new fiscal officer is in place. (3) A new Auditor will be hired. (4) The Board has retained new legal counsel. (5) The

Mr. James P. Aasmundstad
October 9, 2003
Page Two

Appendix H
Page 2 of 3

problem consultant contracts have all been terminated. (6) The Members of the Board of Directors who contracted as consultants have all been removed and are in the process of being replaced. (7) Every job description at KAPS is being rewritten, driven directly by the feedback from Kansas stakeholders in the disability field, in order to better respond to the advocacy needs of Kansas with disabilities. (8) A complete reorganization of the agency is being completed whereby every job at KAPS will be opened up to competition both inside and outside the agency. Current employees will have to apply for these new job descriptions and compete on a level playing field with outside applicants.

In order to plan for this needed agency reorganization, KAPS has completed an extensive outreach effort to reconnect with the disability rights advocacy community in Kansas. Surveys have been sent to over 1,000 Kansans with disabilities and stakeholders in the disability community in order to obtain direct input on what changes need to be made in the KAPS' focus and priorities. Additionally, the Executive Director recently completed a statewide Listening Tour where he held town hall type meetings in every region of the state, including stops in Topeka, Kansas City, Parsons, Wichita, Garden City and Hays. Over 1,000 miles were logged and input was received from hundreds of stakeholders in the disability community through this Listening Tour. The information gathered by these outreach efforts is being directly used to plan for and implement the reforms and reorganization efforts detailed above.

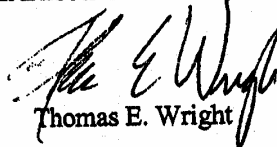
It is not possible for us at this point to respond to each of the questioned consulting and legal fees. KAPS has discussed these issues at length but we do not have the records in question. We have, however, consulted with other appropriate experts. The fact remains that because KAPS is entirely funded with federal grant dollars, KAPS does not possess any non-federal dollars to refund any disallowed expenditures. It is our understanding from discussions with the National Association of Protection and Advocacy Systems (NAPAS) that the federal government has a long standing policy of not allowing the use of federal dollars to refund disallowed expenditures. Recent examples of peer protection and advocacy organizations in other states who also had disallowed expenditures (Pennsylvania, Tennessee, Missouri, etc.) show further precedent that federal dollars cannot be used to refund disallowed expenditures. KAPS will cooperate fully with the Federal agencies involved in order to bring resolution to this matter.

Mr. James P. Aasmundstad
October 9, 2003
Page Three

We do have three insurance policies that may provide some recovery of any funds ultimately determined to be disallowed. These policies can be made available for your lawyers review at any time you desire.

Very truly yours,

WRIGHT, HENSON,
CLARK AND BAKER, LLP



Thomas E. Wright

TEW/jka

Overview of the Office of the Inspector General

Office of Audit

The Office of Audit (OA) conducts comprehensive financial and performance audits of the Social Security Administration's (SSA) programs and makes recommendations to ensure that program objectives are achieved effectively and efficiently. Financial audits, required by the Chief Financial Officers' Act of 1990, assess whether SSA's financial statements fairly present the Agency's financial position, results of operations and cash flow. Performance audits review the economy, efficiency and effectiveness of SSA's programs. OA also conducts short-term management and program evaluations focused on issues of concern to SSA, Congress and the general public. Evaluations often focus on identifying and recommending ways to prevent and minimize program fraud and inefficiency, rather than detecting problems after they occur.

Office of Executive Operations

The Office of Executive Operations (OEO) supports the Office of the Inspector General (OIG) by providing information resource management; systems security; and the coordination of budget, procurement, telecommunications, facilities and equipment, and human resources. In addition, this office is the focal point for the OIG's strategic planning function and the development and implementation of performance measures required by the *Government Performance and Results Act*. OEO is also responsible for performing internal reviews to ensure that OIG offices nationwide hold themselves to the same rigorous standards that we expect from SSA, as well as conducting investigations of OIG employees, when necessary. Finally, OEO administers OIG's public affairs, media, and interagency activities, coordinates responses to Congressional requests for information, and also communicates OIG's planned and current activities and their results to the Commissioner and Congress.

Office of Investigations

The Office of Investigations (OI) conducts and coordinates investigative activity related to fraud, waste, abuse, and mismanagement of SSA programs and operations. This includes wrongdoing by applicants, beneficiaries, contractors, physicians, interpreters, representative payees, third parties, and by SSA employees in the performance of their duties. OI also conducts joint investigations with other Federal, State, and local law enforcement agencies.

Counsel to the Inspector General

The Counsel to the Inspector General provides legal advice and counsel to the Inspector General on various matters, including: 1) statutes, regulations, legislation, and policy directives governing the administration of SSA's programs; 2) investigative procedures and techniques; and 3) legal implications and conclusions to be drawn from audit and investigative material produced by the OIG. The Counsel's office also administers the civil monetary penalty program.