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

FILE: B-203984 **DATE:** September 30, 1982

MATTER OF: St. Elizabeths Hospital--District of Columbia Payments

DIGEST:

1. Where current appropriation to St. Elizabeths Hospital is limited in amount, Hospital will violate Antideficiency Act, 31 U.S.C. § 665(a), if obligations exceed this amount even though Hospital is entitled to, but has not received, reimbursement from the District of Columbia for services provided District residents.

2. Antideficiency Act, 31 U.S.C. § 665(a), phrase excepting obligations authorized by law does not provide authority for St. Elizabeths Hospital to exceed appropriation on basis of mandatory language in District of Columbia Code, 21 D.C. § 501, et seq.

3. When the Federal payment to the District of Columbia has been appropriated and apportioned it becomes due and payable to the District. At this time, before payment to the District, it is available for offset for claims of St. Elizabeths Hospital for services provided District residents.

The Superintendent of St. Elizabeths Hospital (Hospital) has asked for our decision concerning various questions that have arisen as a result of the Hospital's financial relationship with the District of Columbia (District). The Hospital, a part of the National Institute of Mental Health of the Department of Health and Human Services (HHS), is a public mental health hospital primarily serving the District of Columbia. The Hospital receives a direct Federal appropriation and other Federal reimbursements from miscellaneous sources such as executive Federal agencies for care of their beneficiaries. However, a substantial portion of the Hospital's budget is intended to come from payments from the District of Columbia for services provided indigent District residents.

The Hospital's appropriation, prior to fiscal year 1982, provided, in effect, that if the reimbursements due for patient care were not made, the Hospital's appropriation could cover the shortage up to a certain level. See, e.g., Pub. L. No. 96-536, 94 Stat. 3166 (1980), incorporating by reference H.R. 4389, 96th Cong., p. 24. Accordingly, if the District of Columbia did not pay for the services provided District residents, the shortage, to a certain extent, would be made up by an automatic increase in the Hospital's own appropriation.

The Superintendent indicates that until recently, the District failed to reimburse the Hospital for the full amount due. According to the Hospital, at the time of the submission, the District had not paid $34,040,500 of the amounts billed by the Hospital. In order to better understand all aspects of this request we had a meeting attended by representatives of HHS, including the Hospital, the Department of Treasury, the Office of Management and Budget (OMB) and the District. We also requested formal comments on this matter from these organizations, but have received them only from HHS and OMB. We were informed at the meeting that the District of Columbia has now paid the Federal Government the amount in arrears and, as far as we know, is current with its payment for fiscal year 1982. Nevertheless, the Hospital believes that the same deficit financial situation is likely to recur.

Any future deficit would leave the Hospital in an extremely precarious position because as the Superintendent explains, the way in which the Hospital is funded has been drastically changed, beginning with its appropriation for fiscal year 1982. Under the new scheme, the Hospital has an appropriation limited to a maximum $98,864,000, Pub. L. No. 97-92, 95th Stat. 1183 (1981), incorporating by reference H.R. 4560, 97th Cong., pp. 23-24. This amount (the cap) is based on an annual budget for the Hospital, less an amount approximately equal to the expected payment from the District for services provided by the Hospital to District residents.

The new appropriation cap assumes that the Hospital will actually receive payments from the District when due during the fiscal year that service is provided. Since this is an uncertain assumption in view of past practice, the Superintendent has asked a number of questions concerning the new appropriation and his authority to recover claims against the District of

Columbia. Many of the questions originally asked have become moot as a result of the payments made by the District. However, the following questions remain:

1. As the Hospital's appropriation is capped, will there be an Antideficiency Act violation if the Hospital provides unreimbursed services to District of Columbia patients that result in the Hospital exceeding the cap?

2. Does the legislative mandate of 21 D.C. Code § 501 et seq. (1981 Ed.) that the Hospital provide care to those eligible, satisfy the Antideficiency Act provision excepting obligations authorized by law?

3. Can monies appropriated as part of the Federal payment to the District of Columbia government under 47 D.C. § 3401 et seq. (1981 Ed.) be withheld as an offset to the District's indebtedness to St. Elizabeths Hospital?

4. Can the Comptroller General require the District government to adjust its account with the Treasury regarding the difference between its actual payment on the Hospital's account and the amounts due and payable by virtue of their appropriations?

Additionally, the Superintendent inquires about the applicability of 1 D.C. Code § 1132 (1981 Ed.) which provides for the making of agreements between the District of Columbia and the Federal Government for the provision of services and indicates how they are to be paid.

Question 1: As the Hospital's appropriation is capped, will there be an Antideficiency Act violation if the Hospital provides unreimbursed services to indigent District of Columbia patients that result in the Hospital exceeding the cap?

Answer: If the Hospital incurs obligations exceeding any cap on its appropriation, it will be in violation of the Antideficiency Act, 31 U.S.C. § 665(a), which prohibits incurring obligations in excess of the amount available in an appropriation. As described in the submission, the Hospital depends upon substantial reimbursements from the District of Columbia. If these are not forthcoming prior to exhaustion of the amount appropriated and apportioned to the Hospital, further obligations for patient care and related expenses will violate 31 U.S.C. § 665(a) which is a criminal offense if done intentionally. To avoid this, the Hospital may have to suspend operations and make immediate arrangements to transfer all patients to facilities in the jurisdiction responsible for their care. Since the great majority of the patients are District of Columbia residents, the District will have to assume financial responsibility for their care in any event. We know that the District of Columbia Government is well aware of that possibility, as a result of the new method of appropriating for St. Elizabeths Hospital expenses. We hope that it will forestall such a financial crisis for the Hospital by continuing to keep its reimbursements current.

Question 2: Do the legislative mandates of 21 D.C. Code § 501 et seq. (1981 Ed.), that the Hospital provide care to those eligible, satisfy the Antideficiency Act provision excepting obligations authorized by law?

Answer: The Antideficiency Act provides at 31 U.S.C. § 665(a) as follows:

> "(a) No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein; nor shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose, unless such contract or obligation is authorized by law." (Emphasis added.)

The Superintendent suggests that the phrase "authorized by law" appearing at the end of the provision quoted above may except activities authorized under statutes such as 21 D.C. Code § 501

et seq. (1981 Ed.) from the Antideficiency Act prohibitions. The Superintendent refers to his authority under 21 D.C. Code §§ 511, 513, and 545(b), in particular, which requires him to admit patients to the Hospital under certain circumstances. For example, 21 D.C. Code § 513 provides as follows:

> "A friend or relative of a person believed to be suffering from a mental illness may apply on behalf of that person to the admitting psychiatrist of a hospital by presenting the person, together with a referral from a practicing physician. For the purpose of examination and treatment, a private hospital may accept a person so presented and referred, and a public hospital shall accept a person so presented and referred, if, in the judgment of the admitting psychiatrist, the need for examination and treatment is indicated on the basis of the person's mental condition and the person signs a statement at the time of the admission stating that he does not object to hospitalization * * *" (Emphasis added.)

Although this provision requires the Superintendent to admit qualifying patients into the Hospital, it does not authorize him to incur obligations in excess of available appropriations. The exception in the last sentence of 31 U.S.C. § 665(a), quoted above, is for situations in which an agency has specific authority to make contracts or incur other obligations in excess of or in advance of appropriations adequate to cover those obligations. This kind of authority is sometimes called "contract authority."

Contract authority is generally stated by statute in clear and unmistakable terms. See, for example, the exception made in 41 U.S.C. § 11 for military purchases of "clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies." Another section of the Antideficiency Act itself contains an exception for personal services "in cases of emergency involving the safety of human life or the protection of property." 31 U.S.C. § 665(b). See also the general discussion of the "otherwise authorized" exception in 56 Comp. Gen. 437 (1977), particularly pages 443-444. There we analysed the provisions of section 10 of the River and Harbor Act of 1922 which specifically authorized

the Corps of Engineers to enter into large multi-year civil works projects without seeking an appropriation for expenses beyond the first year's needs. We found that this language also provided an exception to the Antideficiency Act.

It is therefore not sufficient that St. Elizabeths Hospital has a statutory mandate to treat all patients who meet the eligibility requirements for admission unless the statute also permits continued operation regardless of the adequacy of the Hospital's remaining appropriations. We interpret the cap on the appropriation as indicating that Congress intended no exception in the case of the Hospital. Therefore, if the mandatory admission of patients would cause a deficiency because the District of Columbia is in arrears with its reimbursements, the Superintendent must reduce nonmandatory expenditures to bring the Hospital within the limits of its available funds. If this cannot be accomplished, and District of Columbia payments are still not forthcoming, the Superintendent may be required to suspend operations and make the alternate arrangements for patient care, discussed above.

Question 3: Can monies appropriated as part of the Federal payment to the District of Columbia Government pursuant to 47 D.C. § 3401 et seq. (1981 Ed.) be withheld as an offset to the District's indebtedness to St. Elizabeths Hospital?

Answer: The District of Columbia is a distinct entity from the Federal Government; one capable of becoming indebted to the United States. 60 Comp. Gen. 710 (1981). Thus by billing the District for patient care, the Hospital has a claim against the District on behalf of the United States. If the District does not pay this claim in a timely fashion, the Hospital is required by the Claims Collection Standards issued under the Federal Claims Collection Act, 31 U.S.C. §§ 951-953 (1976), to aggressively pursue collection of the debt. 4 C.F.R. § 102.1.

Offset is usually available against any claim the debtor has against the United States, since it has long been held that the United States, just like private parties, is entitled to the common law right of offset. See Gratiot v. United States, 40 U.S. (15 Pet.) 336 (1841). Agencies are thus required to attempt to collect a claim by offset from funds in their control owed to the debtor, among other steps, if a debtor does not make timely payment. 4 C.F.R. § 102.3. Accordingly, the answer to this question depends

upon whether the Federal payment, once appropriated, can be considered to be funds owed by the United States to the District.

The District is funded by a Federal payment and its own revenues. 47 D.C. Code § 3401 et seq., (1981 Ed.) The Federal payment, after being appropriated, is apportioned by the Office of Management and Budget for payment to the District. After apportionment the Federal payment is due and payable to the District. It is at this point--after apportionment but before actual payment by the Department of the Treasury--that the Federal payment constitutes money owed by the United States to the District and is available for offset.

Funds from both the Federal payment and District revenues, once received, are deposited in the General Fund of the District of Columbia, from which they may be obligated and expended only in accordance with congressional directives. 47 D.C. Code § 304 (1981 Ed.). Thus the Federal payment is no longer available for offset once it has been apportioned by the Office of Management and Budget and paid over to the District of Columbia.

OMB's practice is to apportion the Federal payment so that it is all paid out by Treasury before the end of the second quarter of the fiscal year. Thus offset is an effective remedy for the Hospital only with respect to claims for patient care already provided during the first half of the fiscal year.

It has been suggested that 32 D.C. Code § 602 (1981 Ed.) may provide St. Elizabeths some relief. This provision provides:

> "The expense of the indigent patients admitted to Saint Elizabeths Hospital from the District of Columbia shall be reported to the Treasury Department, and charged against the appropriations to be paid toward the expenses of the District by the general government, without regard to the date of their admission." (Mar. 3, 1879, 20 Stat. 395, ch. 182, § 1; July 1, 1916, 39 Stat. 309, ch. 209, § 1; 1973 Ed., § 32-402.)

The last source for this provision as it appears in the D.C. Code is a 1916 Appropriation Act, ch. 209, 39 Stat. 309. July 1, 1916. It no longer reflects the Federal relationship with the District Government and the way in which the Federal payment is handled. When this provision originated, District funds were in a Treasury account against which charges could be made. Since fiscal year 1925 Congress has appropriated a lump sum contribution toward the District's general expenses. Compare, ch. 302, 43 Stat. 539 with ch. 148, 42 Stat. 1327; see, S. Rep. No. 1612, 75th Cong., 3d Sess. 8 (1938). As these funds are now paid over to the District early in the year, the mechanism created by § 602 is simply not a viable method of payment for most of the year. There is, indeed, considerable question as to whether this provision has even been properly identified in the District Code as permanent law. Each of the sources given for the section is an appropriation act that gives no indication of an intent that it is to be permanent legislation. See 39 Stat. 309, supra; ch. 182, 20 Stat. 395, March 3, 1879. We do not have to conclude that § 602 is not permanent legislation since we believe that even if properly codified, it is obsolete.

Question 4: Can the Comptroller General require the District government to adjust its account with the Treasury regarding the differences between its actual payment on the Hospital account and the amounts due and payable by virtue of their appropriations?

Answer: The method for collecting debts owed the Federal Government by the District is the Claims Collection Act. 60 Comp. Gen. 710 supra. The authority of the Comptroller General to adjust accounts under 31 U.S.C. § 71 (1976) is the authority to determine the legal status of the account and take exception to unauthorized payments. The Comptroller General can also settle claims for and against the United States, id., which means he can determine that money is owed and the amount, but this settlement authority does not extend to, in effect, transferring funds between accounts. An enactment of the Congress is required for that purpose. 31 U.S.C. § 628-1.

Finally, we see no basis for applying the provision of 1 D.C. Code § 1132 (1981 Ed.) to the situation before us. It is not at all clear whether this provision, which provides for agreements for payments for services between the District

and the Federal Government, has any application to District-Federal relationship where, as in this case, the terms of the relationships are set forth by statute. We have been informed that OMB considers that 1 D.C. Code § 1132 was principally intended to take care of situations like marches or demonstrations, mentioned in subsection (b) of that section, which require intergovernmental cooperation and which entail unforeseeable mixtures of Federal and District participation. Further, there is no such agreement in this instance, much less an OMB approval, as required in 1 D.C. Code 1131 (1981 Ed.). Under the circumstances, we are unable to see how this provision has any legal impact on the questions already discussed.

Harry R. Van Cleve

for Comptroller General
of the United States