GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-232010

March 23, 1989

The Honorable Pat Williams
House of Representatives

Dear Mr. Williams:

You asked us on June 22, 1988 to review the U.S. Department of Education's (the Department) decision not to restore $500,000 which the Rehabilitation Services Division of Montana's Department of Social and Rehabilitation Services mistakenly returned to the Department from its FY 1987 allotment of $4.9 million under the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701-796i (1982). The Department declined to restore the funds to Montana because it considered its FY 1987 appropriation no longer available for obligation.

Subsequent to your request for our views on this matter, Congress in Pub. L. No. 100-436 reappropriated, from the Department's FY 1987 appropriation, the sum of $500,000 to cover obligations incurred by Montana during FY 1987.1/ Although this legislative action provided Montana relief, there remained unresolved the issue whether the Department had the authority, independent of Congress, to restore to Montana all funds up to the amount of the original allotment. In discussions with your staff we were informed that despite the resolution of Montana's immediate problem, the basic issue raised in your letter continues to be of

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1/ Public Law 100-436, 102 Stat. 1703, September 20, 1988, reads in pertiment part as follows:

> "Of the funds provided under the heading 'Rehabilitation Services and Handicapped Research' in fiscal year 1987 in Public Law 99-500 and Public Law 99-591, for carrying out the Rehabilitation Act of 1973, which are unobligated, the sum of $500,000 is reappropriated for an allotment under section 100(b)(1) of the Rehabilitation Act of 1973 to Montana for obligations incurred by Montana during fiscal year 1987."

interest to you and we agreed to address it as though remedial legislation had not been enacted. As discussed below, we have determined that the Department had, prior to enactment of Pub. L. No. 100-436, the authority to restore the $500,000 to Montana without funds being reappropriated by Congress.

BACKGROUND

The Department's Rehabilitation Services Administration (RSA) allotted the State of Montana $4.9 million in Basic State Grant funds for FY 1987 under the Rehabilitation Act of 1973 (the Act). In September 1987, Montana informed RSA, as required, that based on spending patterns in 1985 and 1986, an estimated $500,000 of Montana's allotment would be left unspent. The Department reduced Montana's allotment by $500,000 and realloted these funds to other states. At the close of FY 1987, the Department had obligated virtually all of the funds available for Vocational Rehabilitation State Grants.

In February 1988, Montana notified the Department that it actually needed the $500,000 that had been reallotted in order to satisfy legitimate grant expenses incurred during FY 1987. In April 1988, the Acting Commissioner of RSA issued a memorandum stating the view that Montana's claim to the $500,000 is valid, and that the Department has the legal authority in FY 1988 to make such a payment. But the view of the Acting Commissioner was overruled by the Department. The Department maintained that to restore the returned funds would constitute a new obligation or reobligation, which is not permitted after the period of fund availability.

Montana asserted that its commitments could be satisfied by adjusting the balance of unobligated FY 1987 funds to cover the valid grant costs it incurred in FY 1987. Montana pointed out that since the end of FY 1987, various states reported a total of over $2 million to the Department in unused grant funds. At the time of the submission, the Department reported the actual return of $664,000.

The Department did not question the validity of Montana's expenditures or that they were properly incurred within FY 1987 prior to the time Montana's allotment had been reduced. The Department, prior to the enactment of Pub. L. No. 100-436, simply believed that it lacked the independent authority to reinstate the $500,000 that Montana mistakenly returned. Thus, the issue presented is whether the Department could have restored to Montana, after the close of the fiscal year, rehabilitation funds that Montana had

mistakenly returned to the Department prior to the close of the fiscal year.

ANALYSIS

In our opinion, Montana had a mature claim to these funds at the time the mistake occurred. This claim would clearly be enforceable against the Department but for the expiration of the availability of the appropriation. In cases such as this we have analyzed the availability of appropriated funds by relation back to the pre-mistake status of the parties. See 63 Comp. Gen. 525 (1984); B-164031(3).150, September 5, 1979. The result produced by this analysis is consistent not only with the equities of the situation, but also with the statutory policy underlying the Act and 31 U.S.C. § 1552(a)(2)(1982). Finally, this is not a case where adjustment of the prior year account will result in an overobligation of funds, thereby presenting an Anti-Deficiency Act problem.2/ See 31 U.S.C. § 1341 (1982). Accordingly, we conclude that the Department had the authority to restore to Montana all funds up to the amount of the original allotment.

In the past, we have concluded that where a party has an antecedent legal right, we may relate its claim back to the status quo ante in order to equitably adjust the claim. See 37 Comp. Gen. 861 (1958). This basic proposition, derived from established principles of contract law, permits the restoration of the parties to their position prior to a mistake. Restoration of the parties to their pre-mistake status, or relation back to their original position, is appropriate where there has been no detrimental reliance upon the mistake by an innocent party and fairness requires such a result. See Corbin on Contracts §§ 606, 608 and 611 (Kaufman, 1984 supplement).

As we suggested earlier, we think Montana had a mature claim against the Department prior to its mistake. The State made definite commitments within the fiscal year to make payments from grant funds while they were still validly obligated to the State by virtue of the grant agreement. Under the contractual relationship created by a grant, there is a conditional promise by the grantor to pay the grantee for the performance of certain activities. This conditional promise ripens into a legally enforceable claim available to

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2/ In such a case, our only recourse would be to consider the matter for possible referral to Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d)(1982).

the grantee when the grantee carries out the covered activities and incurs associated costs for which the grantor has promised to reimburse the grantee. See 50 Comp. Gen. 470 (1970).

For the Department to avoid payment based on Montana's mistake is unreasonable considering that Montana has fully implemented its grant agreement and the Department will suffer no detriment.3/ But for its mistake, Montana's right to compel satisfaction of all charges contemplated by the grant appears firmly established. See B-181332, December 28, 1976. It is in cases like this that the relation back theory can be used to avoid what would otherwise be an unfair result. See, e.g., B-208730, January 6, 1983.

Our prior cases support the restoration of funds to a grantee under circumstances similar to these. In 63 Comp. Gen. 525 (1984), we concluded that the Department of Labor (DOL) could return to Puerto Rico funds voluntarily deobligated even though the fiscal year had ended. In that case, Puerto Rico deobligated funds that had been obligated under the Comprehensive Employment and Training Act (CETA) in order to allow DOL to reobligate the funds under the Job Training Partnership Act (JTPA). Before the funds were reobligated, DOL disputed Puerto Rico's plan to administer the JTFA. The matter was ultimately litigated and resolved in favor of Puerto Rico. However, prior to the court's ruling, FY 1983 ended and DOL returned the deobligated funds to the general fund of the Treasury pursuant to 31 U.S.C. § 1552(a)(2)(1982). Even though the funds had not been recorded as obligations in FY 1983, we concluded that the funds should be charged to FY 1983 to reflect commitments made and services provided in FY 1983. In effect, DOL's mistaken view of Puerto Rico's compliance with the JTPA should not prevent the restoration of the withdrawn funds. Our decision pointed out that this result accorded with the

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3/ In this regard, the Rehabilitation Act is designed to promote, as far as possible, the complete expenditure of supporting appropriations. See 29 U.S.C. §§ 730-731. Once the Commissioner has approved a state plan, 29 U.S.C. § 7[illegible](a,b), and the Congress has appropriated funds for the program, funds are allotted to the States (i.e., obligated) according to a population-based formula. 29 U.S.C. § 731(a). To promote, as far as possible, complete expenditure of the appropriation, the Congress has authorized the Commissioner to determine if any payment of an allotment to a state will not be used and, if not, make it available to other states. 29 U.S.C. § 730(c).

policy of section 1552(a)(2) to allow the government to adjust its accounts to accurately reflect what takes place during the period of availability of an appropriation.

Similarly, in B-164031(3).150, September 5, 1979, we concluded that the Department of Health, Education and Welfare (HEW) had authority under the predecessor version of 31 U.S.C. § 1552(a)(2) to restore withdrawn funds to a prior fiscal year account in order to correct its underestimation of states' Medicaid entitlements. In that case, the states incurred Medicaid commitments in FY 1978 in excess of the amount they were awarded in that year. In order to correct the consequences of its underestimation, HEW decided to restore in FY 1979 approximately $157 million to the FY 1978 Medicaid appropriation to pay for these expenses. We recognized the decision as legally authorized by the precodified version of section 1552(a)(2), which permits restoration of a withdrawn unobligated balance to liquidate obligations and effect adjustments after the period of fund availability for new obligations has passed.

Section 1552(a)(2) allows the government to adjust its account to more accurately reflect what transpired during the period an account was available for obligation. Just as in the prior cases, the Department had the authority under section 1552(a)(2) to adjust its FY 1987 account up to the amount of Montana's original allotment to cover costs incurred in FY 1987. We would like to emphasize, however, that this is not a case where adjustments for the prior year account would have resulted in an overobligation of funds, thereby presenting an Anti-Deficiency Act problem. Rather, ample unused funds were returned to the Department by grantees to permit the restoration to Montana of the $500,000 of FY 1987 funds erroneously turned back to the Department.

CONCLUSION

For the foregoing reasons, we conclude that, to the extent that unobligated funds were available, the Department had, prior to the remedial appropriation provided in Pub. L.

No. 100-436, the authority to restore to Montana withdrawn funds up to the amount of the original allotment.

Unless you release it earlier, this opinion will be made available 30 days from today.

Sincerely yours,

James F. Hinchman
General Counsel