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In the Matter of

THE STATE OF MICHIGAN .  
DEPARTMENT OF LABOR, .  
Complainant .

Date Issued: **JUN 2 1995**

Case Nos. 90-JTP-6  
92-JTP-38

v. .

UNITED STATES DEPARTMENT .  
OF LABOR, .  
Respondent .

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Appearances:

For Petitioner:

CHRISTINE DERDARIAN, ESQ.  
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Lansing, Michigan 48913

For Respondent :

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Before: LAWRENCE E. GRAY  
Administrative Law Judge

DECISION AND ORDER

This matter arises under Title IIA of the Job Training Partnership Act, ("JTPA") 96 Stat. 1322 (1982) (codified at 29 U.S.C.A. § 1501 *et seq.* (1985))<sup>1</sup> and the regulations set forth

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<sup>1</sup> The Job Training Partnership Act was amended in 1986, 1988, 1991, and 1992. In the instant case, none of the aforementioned amendments apply to Case No. 90-JTP-6, which relates to funding disbursed for the period October 1, 1984 through September 30, 1989. While the 1988 amendments apply to Case No. 92-JTP-38, which relates to funding disbursed for the period October 1, 1988 to September 30, 1990, they are not relevant to the resolution of this matter. The 1991 and 1992

at 20 C.F.R. Part 626 et seq. (1990). Complainant Michigan Department of Labor ("MDOL") appeals two Final Determinations issued by Respondent United States Department of Labor, Employment and Training Administration ("DOL") on September 28, 1989, and September 11, 1992, respectively.

### *Background*

The Michigan Department of Labor received funding from DOL to operate employment and training programs under the JTPA for the period October 1, 1984 through September 30, 1986 and the period October 1, 1988 through September 30, 1990. Pursuant to the Single Audit Act of 1984, and Office of Management and Budget Circular A-128, *Audits of State and Local Governments*, the Michigan Office of the Auditor General conducted full financial and compliance audits of MDOL for the relevant periods.<sup>2</sup> These audits revealed that MDOL charged JTPA funds for expenditures attributable to state employment and training programs.<sup>3</sup> In its Audit Resolution Reports submitted to the Grant Officer, MDOL explained that the expenditures were allocable to JTPA funds pursuant to its interpretation of section 121(c)(10) of the Act. In each of his final determinations, the Grant Officer rejected MDOL's interpretation of section 121(c)(10) and consequently, disallowed the expenditures attributable to the state programs. More specifically, in his Final Determination issued in 1989, the Grant Officer disallowed \$636,376.00 in costs; and, in his Final Determination issued in 1992, the Grant officer disallowed \$2,692,344.00 in costs.

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amendments do not apply to either Case No. 90-JTP-6 or Case No. 92-JTP-38. For the sake of clarity, all references to the Job Training Partnership Act herein are to the original version set forth at 29 U.S.C.A.A. 51501 et seq. (1985).

<sup>2</sup> The audit pertaining to the grant of JTPA funds for October 1, 1984 through September 30, 1986, is referred to as the "**First Single Audit**," and the audit pertaining to the grant of JTPA funds for October 1, 1988 through September 30, 1990 is referred to as the "**Third Single Audit**." The Final determination of September 28, 1989, was issued as a result of the First Single Audit, and the Final Determination of September 11, 1992 was issued as a result of the Third Single Audit.

<sup>3</sup> The following state employment and training programs, identified by MDOL as "**joint funded**," received JTPA funds: Michigan Youth Corps; Youth Employment Services Program; Displaced Homemaker Program; Michigan Business and Industry Training Program; Michigan Job Opportunities Bank; and, Precollege Engineering. (Stipulation of Facts at ¶ 7.)

On October 17, 1989, MDOL appealed the Grant Officer's 1989 Final Determination and on September 28, 1992, MDOL appealed the Grant Officer's 1992 Final Determination. The cases, docketed as case numbers 90-JTP-6 and 92-JTP-38, were consolidated on October 13, 1992, because they involve substantially similar issues, the resolution of which turns on the same question of law. Pursuant to 20 C.F.R. § 636.10, a hearing was held before me in Lansing, Michigan on June 28, 1993. Complainant's Exhibits 1-16 and Respondent's Exhibits 1-6 were received, as was a Stipulation of Facts. At my request, Respondent DOL submitted excerpts from the *Governmental Generally Accepted Accounting Principles Guide* after the hearing, which I hereby receive as Respondent's Exhibit 7.

Prior to the hearing, the parties resolved a portion of the costs disallowed by DOL in both cases. Costs in the amounts of \$493,445.00 pertaining to the First Single Audit and \$1,676,057.00 pertaining to the Third Single Audit have been resolved and are no longer a part of this controversy. (Stipulation of Facts, at ¶¶ 14-15.) Costs in the amounts of \$142,931.00 pertaining to the First Single Audit and \$1,012,542.00 pertaining to the Third Single Audit, for a total of \$1,155,473.00 remain in dispute and are the subject of this Decision and Order.

#### *Issue*

It is undisputed that the costs in question were attributable to state employment and training programs: the only issue in this case is whether section 121(c)(1) of the Job Training Partnership Act permits states to allocate JTPA funds to state employment and training programs; and if so, whether the regulations require MDOL to allocate to JTPA only those costs which benefit JTPA activities.

#### *Analysis*

The purpose of the Job Training Partnership Act, enacted in 1982 to replace the Comprehensive Employment and Training Act ("CETA"), is to

establish programs to prepare **youth** and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment.

29 U.S.C.A. § 1501. To that end, Congress designed a statutory framework for funding and operating employment and training programs for populations specified by the various titles within the Act. In a significant departure from the CETA legislation, Congress sharply limited the federal government's role to

funding, monitoring, and measuring the performance of employment and training programs. The task of designing and operating employment and training programs under the Act was removed from the **ambit** of federal responsibility and delegated in large part to local decision-making bodies. Similarly, the responsibility for supervising the local programs was passed on to state governors in conjunction with state job training coordinating councils.

Consistent with that general scheme, Congress mandated that any state seeking financial assistance under the Act must submit a semi-annual Governor's Coordination and Special Services Plan which describes the use of all resources and establishes criteria for coordinating JTPA activities with programs and services provided by state and local employment and training agencies. 29 U.S.C.A. § 1531(a) and (b). Section 121 (c) (10) states that the

Governor's coordination and special services activities may include ... providing statewide programs which provide for joint funding of activities under this Act with services and activities under other Federal, State, or local employment-related programs.

29 U.S.C.A. § 1531(c) (10).<sup>4</sup> Funding for activities carried out pursuant to § 121 is authorized by § 202(b)(4), which provides that five per cent of a state's allotment under Title II of the Act "shall be available to the Governor of the State to be used for the cost of auditing activities, for administrative activities, and for other activities under sections 121 and 122."<sup>5</sup> 29 U.S.C.A. § 1602(b) (4).

The Michigan Department of Labor argues that § 121(c) (10), coupled with the Act's general grant of discretion to the states, authorized Michigan to use § 202(b)(4) monies on "joint funded"

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<sup>4</sup> This section of the Act was amended in 1986 to read:

Governor's coordination and special services activities may include ... providing statewide programs which provide for joint funding of **activities** under this Act with services and activities under other Federal, State, or local employment-related programs, including **Veterans' Administration Programs**.

Pub. L. No. 99-496, § 15(d), 100 Stat. 1261, 1266, (1986) *reprinted in 1986* U.S.C.C.A.N., 99th Cong. 2d Sess.

<sup>5</sup> Section 122 of the Act delineates the duties of the State job training coordinating council. 29 U.S.C.A. §1532.

activities. Michigan further argues that the state programs to which the JTPA funds are attributable qualify as "joint funded" activities because the state programs are "employment and training programs targeted at uneducated, unemployed, disadvantaged youth and adults. In support of this contention, MDOL cites the definition of "joint funding" set forth in the regulations governing CETA grants:

'Joint funding' means an undertaking that includes components proposed or approved for assistance under more than one Federal program (or one or more Federal programs and one or more State programs) provided that each contributes materially to the accomplishment of a single purpose or related purposes.

41 C.F.R. 29-70.102 (1981).<sup>6</sup> Thus, Michigan posits that the costs in question are attributable to JTPA funds because the state employment and training programs which charged costs to JTPA funds served the same general purpose as JTPA, and thereby constitute joint funded activities which are permitted under § 121 (c) (10).

While the United States Department of Labor concedes that § 121 (c) (10) permits MDOL to use JTPA funds for "coordinating its state employment and training activities with JTPA activities and establishing 'joint funded' programs," (Grant Officer's Brief at 2), it maintains that "these sections do not address the extent to which costs expended for [§ 121(c) activities] are allocable to JTPA," (Id. at 6). According to DOL, JTPA regulations and generally accepted accounting principles require that costs be allocated to JTPA funding only to the extent that benefits are received. Furthermore, DOL argues, "[f]or JTPA to benefit from the expenditure of JTPA funds, the expenditure of those funds must be completely consistent with JTPA requirements/ (Id. at 14-15.) Thus, DOL contends that Michigan "must show that JTPA activities and JTPA participants or eligibles, established pursuant to JTPA's criteria, benefited from the expenditure of the administrative costs." (Id. at 2.)

I find that the plain language of § 121(c) (10) authorizes the Governor to create a statewide program, the relevant purpose of which is to facilitate the joint funding of JTPA activities with services and activities conducted under other federal, state, or local employment-related programs. Although § 121 (c) (10) implicitly permits states to jointly fund JTPA and state employment and training activities, the § 202(b)(4) funds which are allocated to activities under § 121 are not intended to

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<sup>6</sup> This regulation is incorrectly cited throughout the hearing transcript and the filings of the parties.

provide the funding for those state employment and training activities, i.e., **the** joint funding, itself. Rather, the § 202(b)(4) funds are allotted to the Governor to cover the cost of providing the statewide program **to coordinate the** joint funding of JTPA and state activities. Moreover, § 121(c)(10) authorizes the creation of a "statewide program" the purpose of which is defined by JTPA: therefore, the "statewide program" would be a *JTPA* program - not a "state program" created by state law.

This reading 'of the plain language of § 121(c)(10) is consistent with the Act's overall **scheme** for delivering employment and training services. Under that **scheme, the governor of a state establishes service delivery areas ("SDA")** and a private industry council ("PIC") is established for each SDA. 29 U.S.C.A. §§ 1511, 1512. The PIC, in partnership with local governments, establishes a job training plan for the SDA which is submitted to the Governor for approval. 29 U.S.C.A. §§ 1513, 1515. The Governor is responsible for preparing a statement of goals and objectives to assist *SDAs* in the development of their job training plans, for developing and implementing a plan for coordinating JTPA activities with state and local agencies, and for providing special services, such as a model training program or a program for offenders. 29 U.S.C.A. §§ 1531. Thus, the Governor's role in delivering employment and training services under this Act is limited to coordinating and assisting in the implementation of local job training plans; the Act's schema does not conceive the Governor's role as managing the day to day operations of basic job training programs.

The legislative history of the Act supports this interpretation of the framework for providing job training and employment services under the Act. Both the Senate and the House reports accompanying the respective bills submitted to the Conference Committee for reconciliation define the state's role in employment and training services as one of supervising and coordinating the local delivery system. See **generally** H.R. Rep. No. 537, 97th Cong., 2d Sess. (1982) [hereinafter *H.R.Rep.*] and S. Rep. No. 469, 97th Cong., 2d Sess. (1982), **reprinted in** 1982 U.S.C.C.A.N. 2636 [hereinafter *S. Rep.*]. As described in the Senate report,

**the state will be the key actor in the approval of job training programs. First, and perhaps most important, the state will define the structure of the delivery system through the determination of service delivery areas. ... The governor will also be in charge of approving locally developed plans, of monitoring and auditing the performance of plans, of insuring fiscal responsibility and compliance with federal mandates as well as of running statewide programs. In short, the**

basic supervisory role previously performed by the federal government will now be turned over to the state.

S. Rep. at 2638 (emphasis added). The House Report expresses a similar intent regarding the state's role under the Act:

While the Committee bill does not give to the States any authority to design the local delivery system or approve the plans of local prime sponsors, the Committee recognizes that the evidence points to a need for greater coordination of employment and training programs with related agencies and programs in each state. The Committee has reacted to this need by strengthening the coordinating role of the Governor and the State council.

H. Rep. at 13.

In light of the **Act's** framework, provisions in both the Senate bill and the House amendment which appear to be the source of **§ 121(c)(10)**, suggest that Congress intended to fund the cost of coordinating the joint funding of JTPA activities with other federal, state, or local employment-related activities. The Conference Report notes that

The Senate bill provides that funds available to the Governor may be used for developing linkages between programs funded under this Act and related programs.

The House amendment provides that funds may be used for State-wide programs and to provide for joint funding of activities under this Act and related programs.

H.R. Conf. Rep. No. 889, 97th Cong., 2d Sess. (1982), *reprinted in* 1982 U.S.C.C.A.N. 2729. Both the Senate and the House provisions were accepted by the Conference committee, and presumably resulted in the Act's authorization of funding for **§ 121(c)(10)** pursuant to **§ 202(b)(4)**. *Id.*

The rationale underlying these provisions is most clearly expressed in the House report's discussion of general requirements:

The committee is concerned that funds for the use under the bill not duplicate facilities or services already available in an area. Instead, the intent of the Committee is to encourage the utilization of existing programs and facilities consistent with performance and effectiveness criteria.

H. Rep. at 16.

However, the fact that both the Senate and the House wanted states to avoid duplicating facilities and services is most clearly evidenced by the Act itself. With only limited exceptions, § 107(b) of the Act mandates that "[f]unds provided under this Act shall not be used to duplicate facilities or services available in the area." 29 U.S.C.A. § 1517.

In sum, then, the most viable interpretation of § 121(c)(10) is that it represents Congress's desire to encourage states to make the most efficient use of employment and training resources by authorizing the Governor to establish a statewide program, the purpose of which is to coordinate the array of federal, state, and local employment and training services. This interpretation of § 121(c)(10) does no violence to the Act's delineation of state responsibilities under the Act nor to its express intention to encourage coordination of services. In contrast, MDOL's interpretation as allowing the Governor to charge JTPA funds for state-created employment and training services requires one to ignore the Act's framework for implementing job training programs as well as its preference for coordinated services. It alters the Governor's role by allowing him, in effect, to deliver state-created employment and training services paid for with federal funds. MDOL's interpretation also provides implicit authorization for the duplication of JTPA employment and training services which is expressly prohibited by the Act. In short, MDOL interprets § 121(c)(10), in conjunction with § 202(b)(4), as providing the Governor with a block grant to fund any employment or training program - an interpretation wholly at odds with the framework of the Act and Congress's intent in structuring the Act as it did.

Reading § 121(c)(10) under the bright lights of plain language and Congressional intent, the costs at issue in this case cannot be allocated to JTPA funds pursuant to § 121(c)(10) because there is no evidence that the programs which received the § 202(b)(4) funds were established for the purpose of coordinating or facilitating the joint funding of JTPA activities and other federal, state, or local employment and training services. To the contrary, MDOL stipulated that the state programs at issue were "funded by state dollars" (except, of course, those costs which were charged to JTPA funds) and "constitute state employment training programs/ (Stipulation of Facts at ¶ 9.) As these programs do not fit under the rubric of programs designed to coordinate - or "provide for" - the joint funding of JTPA activities with other employment and training activities, the costs at issue must be disallowed.

ORDER

The Grant Officer's Final Determinations of September 28, 1989, and September 11, 1992, are affirmed to the extent that they disallow costs in the amount of \$1,155,473.00 charged by MDOL to JTPA funds.

  
Lawrence E. Gray  
Administrative Law Judge

SERVICE SHEET

Case Name: MICHIGAN DEPARTMENT OF LABOR Case No. 90-JTP-6  
92-JTP-38

Title of Document: DECISION AND ORDER

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